United States Court of Appeals

for the Second Circuit

APPENDIX

76-6084

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UNITED STATES COURT OF APPEALS
FILED
AUG 2 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

Appendix

PAGINATION AS IN ORIGINAL COPY

NO. 76-6084

UNITED STATES COURT OF APPEAL

FOR THE SECOND CIRCUIT

JOHN W. FITZGERALD,

plaintiff-appellant

v.

DONALD R. DEVARNEY, et.al.

defendants-appellees

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

JOINT APPENDIX

NANCY E. KAUFMAN
RUBIN & SILVERMAN
BOX 185
PLAINFIELD, VERMONT 05667

LAW OFFICES
RUBIN & SILVERMAN
BOX 185
PLAINFIELD, VERMONT
05667
(802) 454-7333

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Civ. 74-164

Jury demand date:

COFFRIN

Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
John W. Fitzgerald vs. Donald R. Devarney, individually and in his capacity as Postmaster of the Post Office in Milton, Vermont, Elmer J. Klassen, individually and in his capacity as Postmaster General of the United States Postal Service, Raymond A. Gordon, individually and in his capacity as a Rural Carrier with the Post Office in Milton, Vermont The United States Postal Service, an independent establishment of the Executive Branch of the Government of the United States	For plaintiff: Thomas L. Hayes, Esq. 862-9325 200 Main St., Burlington, Vt. John W. Fitzgerald, pro se RD #2 Milton Vt 05468 Nancy E. Kaufman, Esq. Rubin & Silverman, Esqs. Box 185, Plainfield, VT 05667 454-7333 For defendant: U. S. Attorney

STATISTICAL RECORD	COSTS	DATE 1974	NAME OR RECEIPT NO.	REC.	DISB.
5 mailed JUL 5 1974	Clerk	6-27	#22866	15 00	
		11 18 1976	CD#55		15 cc
6 mailed FEB 4 1976	Marshal	3-15	#25487	5 00	
of Action: Selective vice Act of 1967 USCA App. Sec. 459)	Docket fee				
	Witness fees				
ion arose at: 2	Depositions				

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DATE 1974	PROCEEDINGS	Date Ord Judgment
June 27	Filed Complaint.	1
" "	Issued Summons.	
July 3	Filed Summons returned served.	
Sept. 16	Filed Stipulation to extend by 30 days the time in which Defts. may answer.	
" "	In accordance with Rule 6(b) of the FRCP, upon consideration of Stipulation to extend the time for an additional 30 days in which to file Deft.'s Answer, it is	
" "	So Ordered. Attorneys notified.	
" " 27	Filed Deft's Answer.	4.
1975		
Jan. 6	Filed Notice of Pretrial Conf. Sch. 1-28-75, 2:30 P.M. at Burl.	5.
" 24	" Govt's Motion for Summary Judgment.	6
" "	" Govt's Memorandum of Points & Authorities in support of Motion for Summary Judgment.	7
Feb. 4	Filed Plaintiff's Motion for Continuance.	8.
" "	" " Memorandum in Opposition to Defts.' Motion for Summary Judgment.	9.
" 5	Upon consideration of Plaintiff's Motion for Extension of Time in which to Amend Memorandum and file affidavits in opposition to Defendants' Motion for Summary Judgment, it is,	
" "	ORDERED: In accordance with Rule 6(b) F.R.C.P., motion granted. Hearing on motion deferred at least until February 13, 1975. Mailed copy to attorneys.	
" 10	At the Call of the Calendar, it was	
" "	ORDERED: that this case be passed.	
" 13	Filed Plaintiff's submission of supplemental memorandum and affidavit in opposition to Defendants' motion for summary judgment.	10.
" 17	In Court before Judge Coffrin. Thomas L. Hayes, Esq. for plaintiff. David Reed, Ass't. U.S. Attorney and Richard Levin, Esq. for Government.	
" "	Hearing on defendants' motion for summary judgment.	
" "	Statements made to Court by Mr. Reed followed by Mr. Hayes.	
" "	ORDERED: Motion denied. Case to be set in usual turn for trial.	
" "	Hearing on defendants' motion to dismiss on basis of official immunity in Government's motion for summary judgment.	
" "	Statements made to Court by Mr. Reed followed by Mr. Hayes.	
" "	ORDERED: previous order modified.	
" "	ORDERED: Motions taken under advisement. Plaintiff has 10 days in which to respond to Governments motion to dismiss.	
Mar. 27	Field Additional Memorandum in Opposition to Defendants' Motion for Summary Judgment.	11.
" 31	Filed Order--Deft's Motion for Summary Judgment denied. Mailed copy to attorneys.	12.
May 12	" Notice of Pretrial Conf. sch. 6-16-75, 9:30 A.M. at Burlington	13.
June 25	" Deft. Devarney's contentions & theories of defense, related to pre-trial conferences.	14.
" 30	" Deft. Devarney's proposed exhibits related to pre-trial conferences - witnesses.	15.
" "	In Chambers before Judge Coffrin. Thomas L. Hayes, Esq. for Plff., David Reed, Ass"t. U. S. Attorney for Govt.	
" "	A discussion was held betw een Court and Counsel.	
" "	Counsel by July 9, 1975 are to determine which exhibits are agreed upon and to mark same.	
" "	A tentative trial date - 1st week of August, 1975.	

D. C. 110 Rev. Civil Docket Continuation

Civ. 74-164 Fitzgerald vs. Devarney

DATE 1975	PROCEEDINGS	Date Judgm
June 30	Filed Pre-Trial Conference Order.	16
Aug. 6	In open Court before Judge Coffrin, trial by Court begun. Thomas L. Hayes, Esq. for Plaintiff; David Reed, Esq. and Richard Levin, Esq. for Defendants.	
" "	The following witnesses, sworn by Clerk, were examined for Plaintiff: John W. Fitzgerald and John D. Leonard.	
" 7	Trial resumed.	
" "	John W. Fitzgerald was recalled and further examined by Mr. Hayes	
" "	Donald Devarney, sworn by Clerk, was cross-examined by Mr. Hayes.	
" 8	Trial resumed.	
" "	John W. Fitzgerald was recalled and further examined.	
" "	The following witnesses, sworn by Clerk, were examined for plaintiff: Stanley D. Henry, Phyllis Thompson and George E. Brett.	
" "	At 2:15 PM, plaintiff rests.	
" "	Mr. Reed moves that defendants Devarney and Klassen be dismissed as individuals.	
" "	Taken under advisement.	
" "	Mr. Reed also moves that case be dismissed.	
" "	Ordered: Motion denied.	
" "	Clifton Wood, sworn by Clerk, was examined for Government.	
" "	The following witnesses were recalled and examined by Mr. Reed: Stanley D. Henry and Donald Devarney.	
" "	At 4:30 PM, defendants rests; plaintiff rests; evidence closed.	
" "	Decision reserved.	
" 21	Filed Subpoena to Produce Document or Object returned served.	17
" "	Filed three subpoena returned served.	18
1976		
Feb 17	Filed, Findings of Fact, Opinion and Order.., Judgement entered against Plaintiff for Defendant, Donald R. DeVarney, Elmer J. Klassen, and Raymond A. Gordon, and for Plaintiff US Postal Service to the extent of reinstatement to a position with the Postal Service. Mailed copy to attorneys.	D
" "	Filed Judgment on Decision by the Court---Judgment is entered in this cause against the Pltf. for defts. DeVarney, Klassen and Gordon and for the Pltf. against deft. United States Postal Service to the extent or reinstatement to a position with the Postal Service. (Mailed copy to Attys.)	20.
Mar. 15	Filed Pltf's Notice of Appeal. Mailed copy to A. Daniel Fusaro, Francis A. Cumming, Mr. Fitzgerald, Thomas Hayes, Esq. and U. S. Attorney.	21.
April 6	" Plaintiff's Motion to Proceed in Forma Pauperis.	22
" 15	" Defts' Notice of Appeal. Mailed copy to A. Daniel Fusaro, Francis A. Cumming, Mr. Fitzgerald, Thomas L. Hayes, Esq. and U. S. Attorney & Judge Coffrin.	23.
" 16	" Plaintiff's Withdrawal of Motion to Proceed in Forma Pauperis.	24.
Apr. 26	" Notice of Appearance of Rubin & Silverman, Esqs. for plaintiff.	25.
" "	" Waiver of Hearing on petition to proceed in Forma Pauperis.	26.
May 25	Mailed entire case file to Clerk, United States 2nd Circuit.Court. (Attorneys notified.)	
" 27	Filed civil appeal scheduling order. Copy mailed to attorneys of record.	27.
June 21	" Transcript of trial by Court held August 6-8, 1976.	28.
" 22	Mailed Supplemental Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y.	

DATE 1976	PROCEEDINGS	Date O... Judgme...
July 6	Filed Notice of Dismissal of Appeal in Circuit Court of Appeals for the Second Circuit; dismissed as to Defts.-Appellants Donald R. Devarney, Elmer J. Klassen, Raymond A. Gordon and US. Postal Service. Mailed copy to attys. & Judge Coffrin.	29.

COPY

District of Vermont
Civ 74-164 (5)

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

76-6081

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 29th day of June one thousand nine hundred and seventy-six

UNITED STATES COURT OF APPEALS
FILED
JUN 29 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

OH[redacted]. FITZGERALD, Plaintiff-Appellant-Appellee,

v.

ONALD R. DEVARNEY, individually and in his apacity as Postmaster of the Post Office in ilton, Vermont, ELMER J. KLASSEN, individually and in his capacity as Postmaster General of The United States Postal Service, AYMOND A. GORDON, individually and in his apacity as a Rural Carrier with the Post ffice in Milton, Vermont, and THE UNITED TATES POSTAL SERVICE, and independent establishment of the Executive Branch of the overnment of the United States,

Defendants-Appellees-Appellants

76-6084

U.S. DISTRICT COURT
DIST. OF VERMONT
FILED
JUL 6 10 15 AM '76
CLERK
BY DEPUTY CLERK

The Civil Appeals Management Plan of this court having been promulgated on April 9, 1974 providing that within 10 days after filing a notice of appeal the appellant shall docket an appeal, by filing and serving a pre-argument statement (Form C), by ordering from the court reporter a transcript of the proceedings and filing and serving a statement concerning same (Form D) and by paying the docket fee and that in default of either of which the Clerk may dismiss the appeal without further notice,

And the appeal herein not having been so docketed,

Upon consideration thereof, it is

Ordered that the appeal from the judgment of the

JUN 29 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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JOHN W. FITZGERALD, Plaintiff-Appellant-Appellee,

v.

DONALD R. DEVARNEY, individually and in his capacity as Postmaster of the Post Office in Milton, Vermont, ELMER J. KLASSEN, individually and in his capacity as Postmaster General of The United States Postal Service, RAYMOND A. GORDON, individually and in his capacity as a Rural Carrier with the Post Office in Milton, Vermont, and THE UNITED STATES POSTAL SERVICE, and independent establishment of the Executive Branch of the Government of the United States,
Defendants-Appellees-Appellants

76-6084

JUL 6 10 15 AM '76
CLERK
BY [illegible] DEPUTY CLERK

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

The Civil Appeals Management Plan of this court having been promulgated on April 9, 1974 providing that within 10 days after filing a notice of appeal the appellant shall docket an appeal, by filing and serving a pre-argument statement (Form C), by ordering from the court reporter a transcript of the proceedings and filing and serving a statement concerning same (Form D) and by paying the docket fee and that in default of either of which the Clerk may dismiss the appeal without further notice,

And the appeal herein not having been so docketed,

Upon consideration thereof, it is

Ordered that the appeal from the judgment of the United States District Court for the District of Vermont by and it hereby is dismissed, as to Defendants-Appellants Donald R. Devarney, Elmer J. Klassen, Raymond A. Gordon, and The United States Postal Service.

A. DANIEL FUSARO
Clerk

by Vincent A Carlson
Chief Deputy Clerk

A true copy,
A. Daniel Fusaro Clerk

29

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24 Jun 71

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

JOHN W. FITZGERALD
Plaintiff

CIVIL ACTION NO._____

vs.

DONALD R. DEVARNEY, individually
and in his capacity as Postmaster
of the Post Office in Milton,
Vermont
ELMER J. KLASSEN, individually
and in his capacity as Postmaster
General of the United States
Postal Service
RAYMOND A. GORDON, individually
and in his capacity as a Rural
Carrier with the Post Office
in Milton, Vermont
THE UNITED STATES POSTAL SERVICE,
an independent establishment of the
Executive Branch of the Government
of the United States
Defendants

PLAINTIFF'S COMPLAINT

1. Plaintiff brings this action pursuant to the Selective Service Act of 1967 (50 U.S.C.A. App. Section 459); the Postal Reorganization Act of 1970, Public Law 91-375; and 5 U.S.C.A. 2108, 7501, 7511 and 7512.

2. This Court has jurisdiction of this cause under the provisions of Title 28 of the United States Code, Section 1331; 50 U.S.C.A. App. Section 459; 39 U.S.C.A. Section 409 and 410; and 28 United States Code Sections 1331 and 1339. Plaintiff seeks an award of compensatory and exemplary damages against all Defendants in the above entitled cause except Raymond A. Gordon. Plaintiff further seeks a temporary restraining order and such preliminary and permanent equitable relief as are appropriate in the circumstances. The matter in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand Dollars.

restraining order and such preliminary and permanent equitable relief as are appropriate in the circumstances. The matter in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand Dollars.

3. This is an action by a veteran and former employee of the United States Post Office in which he seeks reinstatement to his former position as a rural letter carrier with the Milton, Vermont Post Office and back pay and damages

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KS L. HAYES
NEY AT LAW
TON, VERMONT

for his wrongful and unlawful discharge therefrom and for the unlawful refusal to reemploy him in said position after the termination of his military service.

4. John W. FitzGerald, Plaintiff herein, is a citizen of Vermont whose residence is in Milton, Vermont.

5. Defendant Donald R. DeVarney, at all times relevant herein was and now is a citizen of Vermont holding the office of Postmaster, Milton, Vermont; and all of said Defendant's acts and omissions herein complained of were done under color of law and with the claimed authority of his office as well as individually; and the recovery herein sought from the said DeVarney is sought both against him as an individual and in his capacity as Postmaster.

6. Defendant Elmer J. Klassen is Postmaster General of the United States Postal Service, an independent establishment of the Executive Branch of the Government of the United States.

7. Defendant Raymond A. Gordon is a citizen of St. Albans, Vermont who presently and without legal right holds the position of rural letter carrier with the Milton, Vermont Post Office, said position being that which Plaintiff herein held at the time of Plaintiff's entry into the Armed Forces and to which Plaintiff seeks reinstatement through this suit.

8. Defendant the United States Postal Service is an independent establishment of the Executive Branch of the United States Government having offices in every state. For the purposes of this suit the United States Postal Service is the successor in interest to the United States Post Office.

9. Plaintiff, a veteran and Air National Guardsman, was appointed a career rural carrier with the Milton, Vermont Post Office on December 15, 1959 and served in that capacity until November 2, 1970 when he was ordered into active duty in the United States Air Force.

10. During the time that Plaintiff served as a career rural carrier and on or about June 1969 the Defendant DeVarney became a candidate for the Milton School Board and was elected to the office. 8

11. At a public meeting on or about June 1970 the Plaintiff challenged the legality of said DeVarney's actions in holding the School Board post simultaneously with the Postmastership and the Plaintiff made a protest to the Attorney General of the State of Vermont and to the Post Office Department.

12. Plaintiff states on information and belief that the Attorney General of Vermont investigated the matter and that Defendant DeVarney was instructed to resign from the Milton School Board by the Post Office Department.

13. Thereafter, Defendant DeVarney resigned from the Milton School Board, necessitating a special election to fill his seat.

14. As provided by postal regulations and in accord with normal Post Office practice, Plaintiff chose a substitute carrier who was approved and hired by Defendant DeVarney in January 1970 to carry the mail when Plaintiff was absent on military duty; and said substitute, one Rupert Stebbins, did so willingly and without fail each and every time Plaintiff was absent from his post. Said Stebbins at all times performed all of his functions competently and to the satisfaction of Plaintiff and of Defendant DeVarney.

15. From January to June of 1970 Plaintiff used 15 days of military leave, three weeks of paid vacation and also took a number of days of leave without pay to become "combat ready" in a new aircraft.

16. On May 8, 1970 Plaintiff submitted a request for one year of leave without pay to fly with the Air National Guard. Notwithstanding his obligation to approve this request, Defendant DeVarney denied Plaintiff's request, citing "needs of the Postal Service" as his reason. Plaintiff states on information and belief that said reason was arbitrary, capricious and illegal as Plaintiff's substitute carrier was willing and able to carry mail for the entire proposed period of absence.

17. In May of 1970, Plaintiff's Air National Guard unit was placed on Air Defense Command alert and all unit personnel including Plaintiff were expected to "volunteer" for days of alert and for extra flying days and training.

18. As he had done often in the past, Plaintiff on May 2, 1970 and subsequent months, requested leave without pay to perform said duty days as well as regular unit drills and training.

19. In May of 1970 and thereafter, Defendant DeVarney began to disapprove Plaintiff's requests alleging orally and in several "letters of warning" that Plaintiff had not filed the appropriate forms before or after his absences, that he had not provided copies of his orders, that he was "absent without leave," and that, since Plaintiff's military duty was "voluntary" he, Defendant DeVarney, did not have to approve it, and he refused to do so. Defendant DeVarney's stated reason for refusing leave to Plaintiff remained "needs of the Postal Service" throughout.

20. It was the practice of Plaintiff, during the period January 1, 1970 through July 1970, to request leave in advance on Post Office Department form 3971 and/or on Air Force forms for the days when he needed to be absent on military duty and

THOMAS L. HAYES
ATTORNEY AT LAW

required

Plaintiff did produce copies of his orders subsequent to his performance of duty, when requested to do so. Further, Plaintiff's substitute carrier did carry the mail for him on all such days. In addition, Plaintiff had furnished Defendant DeVarney with numerous signed certificates that he had in fact performed military duty on the days he was absent and promptly gave them to DeVarney upon Plaintiff's return to Post Office duty. Plaintiff wrote several letters on June 22, 1971 addressed to "To Whom it May Concern" which explained his position and justified his absences. These letters were received and read by Defendant DeVarney.

21. On June 29, 1970 Plaintiff wrote a letter to Mr. Michael Zeeb, Regional Counsel for the United States Post Office, Boston, Massachusetts requesting advice as to whether he should file a grievance against Defendant DeVarney or what other action he should take because of the problems resulting from the actions of Defendant DeVarney in disapproving Plaintiff's requests for leave. Plaintiff took this course because no one in the Milton Post Office seemed to know how to go about filing a formal grievance and Plaintiff's earlier oral statement of his grievance to Defendant DeVarney and his inquiries into grievance procedures had been ignored. On or about the 15th of July 1970 Plaintiff telephoned the said Mr. Michael Zeeb because the former had received no response to his letter.

22. Defendant DeVarney refused on a number of occasions between May 1, 1970 and November 21, 1970 to grant Plaintiff leave without pay to attend required unit drills as well as

Mr. Michael Zeeb because the former had received no response to his letter.

22. Defendant DeVarney refused on a number of occasions between May 1, 1970 and November 21, 1970 to grant Plaintiff leave without pay to attend required unit drills as well as other duty assignments, and at one point refused to accept any written requests from Plaintiff for leave without pay, notwithstanding the fact that (a) if an employee reservist makes a request for a leave of absence for military training

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RNEY AT LAW
STON, VERMONT

purposes, his request must be granted under Section 9 (g) (4) of the military Selective Service Act of 1967 and (b) under PM 721.521, a Postal regulation, reservists and National Guardsmen may demand the granting of such leave pursuant to the provisions of Section 9 (g) of the Military Selective Service Act of 1967.

23. On or about May 8, 1970 the Plaintiff requested leave without pay to go on active military duty with the United States Air Force for a period of one year but his request was denied by Defendant DeVarney. Such denial was in violation of the applicable postal regulation 721.542K which provides that members of the reserve components of the Armed Forces shall be granted leave for such purposes.

24. The actions complained of in the preceding paragraph were also contrary to Postal Regulation 721.713 which states that it is the policy of the Post Office Department to allow any employee so desiring to serve in a Reserve or National Guard Unit and no action to discourage this will be permitted and such actions were contrary to Postal Regulation 721.7 which says that Postal officials must permit employees to participate in monthly drills or meetings scheduled by the National Guard or Reserve Units of the Armed Forces, to attend the usual summer training periods and in addition any other active duty ordered by the National Guard and other Reserve units.

25. On July 17, 1970 Defendant DeVarney sent Plaintiff a "Notice of Proposed Adverse Action" in which DeVarney charged that Plaintiff had been absent from his scheduled assignment at the Milton Post Office on twelve specified dates.

26. On July 27, 1970 Plaintiff again wrote Michael Zoo this time by certified mail, demanding a response to his letter of June 29.

27. Also on July 27, 1970 Plaintiff filed two formal grievances against Defendant DeVarney charging that DeVarney was improperly denying him leave without pay and harassing him for purely personal reasons. By letter of July 31, 1970 to Plaintiff, Defendant DeVarney acknowledged receipt of these two formal grievances but stated that "the grievance procedure cannot be implemented at this time."

28. On July 29, 1970 Defendant DeVarney sent Plaintiff a "Notice of Adverse Action". Defendant DeVarney stated therein "After careful consideration of all the facts in your case, including your failure to reply (to the letter of July 17), it has been decided that charge numbered 1, which is supported by substantial evidence, is sustained, and in conjunction with the elements of your past record cited in the letter referred to above, warrants your removal from the Postal Service." Plaintiff did reply to said letter of July 29, 1970.

29. On August 5, 1970 the National Rural Letter Carrier's Association entered the case on Plaintiff's behalf and appealed the Postmaster's decision in the matter.

30. Pursuant to Plaintiff's appeal a hearing was held on October 8, 1970 and findings of fact were filed but no decision was ever rendered in the matter until 1971.

31. While Plaintiff was on active duty in the Air Force, on November 3, 1970 Defendant DeVarney sent Plaintiff a second "Notice of proposed adverse action" charging Plaintiff with being absent without permission from his duty assignment at the Milton Post Office on certain specified dates.

32. Defendant DeVarney knew that at all times when Plaintiff was absent Plaintiff was performing military duty; that Plaintiff had a clear legal right to perform such duty without prejudice to his employment with the Post Office; and,

OMAS L. HAYES

rurther, Defendant DeVarney knew that none of Plaintiff's absences had or would have any adverse effect on the operations of the Milton, Vermont Post Office since Plaintiff's substitute rural carrier was fully qualified to carry the mail in Plaintiff's absence and had in fact been approved for such duty by Defendant DeVarney, himself. Said substitute carrier had in fact carried the mail in Plaintiff's stead at all times when Plaintiff was performing military duty and was ready, willing, and able to carry whenever Plaintiff was performing military duty, all of which was known by Defendant DeVarney prior to the actions herein complained of.

33. Despite the foregoing, and because Defendant DeVarney bore great but unjustified personal malice toward Plaintiff, and for no other reason, Defendant DeVarney brought the charges against Plaintiff and in Plaintiff's absence, as hereinbefore described in paragraph numbered 31, and pursuant thereto, on November 17, 1970, did knowingly, arbitrarily, and unlawfully issue to Plaintiff, while Plaintiff was absent on military duty, a letter of decision in which the said DeVarney alleged that the charge of absent without leave was sustained and warranted Plaintiff's removal from the Postal Service.

34. The decision of Defendant DeVarney to remove Plaintiff from his employment was appealed, during Plaintiff's military absence, through the administrative appeals system of the Post Office Department.

35. Despite the fact that on and after November 2, 1970 Plaintiff was on duty with the United States Air Force, the Post Office Department continued to proceed on one adverse action and initiated a second one - all in violation of Civil Service Regulations Chapter 353-A-1 and Chapter 353-3-7.

36. Chapter 353-A-1 of Civil Service Regulations states:

"The agency holds in abeyance any adverse action

incomplete when the employee leaves." Chapter 353-3-7 of such regulations states: 14

"If the Commission orders an agency to remove an employee who is on Military duty, the agency should return the order with the information that the employee is on military duty. The Commission does not order removal of an employee when it knows he is absent on military duty."

37. On September 1, 1972, shortly after his release from active duty, Plaintiff requested reinstatement to his former position as a rural letter carrier in the Milton, Vermont Post Office. His request for reemployment was denied by Postmaster DeVarney and the office of Defendant, Postmaster General Klassen.

38. After denial of his request for reinstatement, Plaintiff contacted the Department of Labor asserting that his reemployment rights under the Selective Service Act of 1967 had been denied. The Department of Labor took the position that Plaintiff did have reemployment rights under the aforementioned statute and that his dismissal by the Postal Service was contrary to the intent expressed by Congress in the Military Selective Service Act.

39. Alexander R. Sutton, Area Administrator of the Department of Labor in a letter to John T. Farrell, Jr., Regional Counsel, with reference to the reemployment rights of the Plaintiff stated in part: "Mr. FitzGerald met all of the requirements set forth under Federal Law for requesting training duty for which he had received orders to perform... For this reason, our office takes the position that his dismissal by the Postal Service is contrary to the intent expressed by Congress in the Federal law, and he should, therefore, be reinstated in his former position. His dismissal from the Postal Service appears to have been effected by

permitting Postal Service regulations to take precedence over Federal statute. Accordingly, we request that immediate steps be taken to have Mr. FitzGerald restored to his former position as a rural letter carrier in the Milton, Vermont, Post Office, with all of the seniority, status and pay he would have achieved except for his absence for military service."

40. During 1972 and 1973 Plaintiff has made numerous attempts to obtain reinstatement to his former position as a rural letter carrier with the Milton, Vermont Post Office but all of such attempts have been rejected by the Postmaster General, Defendant herein, his office or officers and employees under his direction.

41. Plaintiff states on information and belief that the Defendant DeVarney instituted adverse action against him and refused to reappoint him, in whole or in part, to retaliate against Plaintiff for the exercise of speech, utterances, writings and communications closely akin to pure speech, all encompassed within the freedoms guaranteed and protected by the First Amendment of the Constitution of the United States.

42. Plaintiff alleges that this Honorable Court should grant Plaintiff temporary equitable relief on the ground that to fail to do so would cause immediate and irreparable injury to Plaintiff.

43. As a direct result of the violation of Federal statutes, postal and Civil Service regulations, and the First Amendment of the Constitution of the United States, as alleged and referred to hereinabove, Plaintiff has suffered monetary loss by reason of the actions of the Defendants DeVarney and Klassen, hereinbefore referred to, and has suffered monetary loss by reason of the fact that Defendant Raymond A. Cordon occupies the position of rural letter carrier with the Milton, Vermont Post Office to which Plaintiff is entitled.

The monetary loss suffered by Plaintiff by reason of the actions of the Defendants includes loss of pay for weeks that Plaintiff was unemployed; loss of pay for military leave, holidays, and sick leave; loss of the contribution of the Federal Government toward medical insurance premiums and to the Civil Service Retirement Fund; loss of the strike settlement paid to all postal workers in 1971; loss of car allowance, overtime during the Christmas season during the years 1972 and 1973; loss of contribution of the Federal Government to the cost of life insurance; loss of money expended and time expended in an effort to obtain reinstatement to the rural carrier position, including, but not limited to, telephone, postage, travel, duplication of documents, the reasonable value of time expended as well as payment of attorney's fees; interest paid by Plaintiff on money borrowed by him as a result of the decision not to reappoint him; and the loss of money suffered by Plaintiff because he was compelled to sell coins and silver certificates by reason of the actions of the Defendants DeVarney and Klassen. The Plaintiff has suffered mentally, emotionally and physically and has endured embarrassment and humiliation. His working reputation has been permanently damaged. The impairment of Plaintiff's employment opportunity, the impairment of his status in his community, the impairment of his reputation as a good worker and, generally, the stigma imposed upon a person who is discharged from employment without the expression of reasonable and lawful cause, have caused Plaintiff great injury and he is suffering immediate and irreparable injury. Plaintiff alleges on information and belief that the actions of the Defendants DeVarney and Klassen were malicious and undertaken with a wanton and reckless disregard of the consequences flowing therefrom, resulting in great impairment of the Plaintiff's status and reputation, by reason of said actions causing the Plaintiff not to be

irreparable injury. Plaintiff alleges on information and belief that the actions of the Defendants DeVarney and Klassen were malicious and undertaken with a wanton and reckless disregard of the consequences flowing therefrom, resulting in great impairment of the Plaintiff's status and reputation, by reason of said actions causing the Plaintiff not to be reappointed.

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AS L. HAYES
RNEY AT LAW
STON, VERMONT

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44. At all times herein material, the individual Defendants, DeVarney, Klassen and Gordon were either employees of or agents of the Defendant United States Postal Service, and they were acting within the scope of and under the authority of said United States Postal Service, and the sundry wrongful acts of the aforesaid three individual Defendants were at all times the wrongful acts of their principal and employer, the United States Postal Service. All references herein to the Defendant United States Postal Service include said Defendant's predecessor, the United States Post Office Department.

45. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays that this Court:

(a) Assume jurisdiction of this cause pursuant to the provisions of law hereinbefore referred to;

(b) Decree and order such temporary equitable relief as is appropriate in the circumstances, and, in particular order that Plaintiff be reappointed to his position as a rural letter carrier with the Milton, Vermont Post Office until such time as this Honorable Court makes a determination with respect to permanent equitable relief.

(c) Decree and order such equitable relief as is appropriate in the circumstances and in particular order:

(1) That the Defendants DeVarney and Klassen reappoint Plaintiff as a rural letter carrier with the Milton, Vermont Post Office with all the rights and privileges of others in like circumstances and with all salary and other monetary benefits or items that were denied to him; and

(2) That Defendants or any of them or their successors or the successor of any of them refrain from in any way discriminating against the Plaintiff for his political conduct or expression or symbolic speech;

(3) Order that Defendant Raymond A. Cordon be restrained from occupying the position as rural carrier formerly occupied by the Plaintiff.

(4) That the Court award Plaintiff the costs of this action and a reasonable attorney's fee, and,

(d) In addition to the foregoing, Plaintiff demands judgment against the Defendants in the sum of Fifty Thousand Dollars, composed of compensatory damages in the amount of Twenty-five Thousand Dollars, and punitive and exemplary damages in the amount of Twenty-five Thousand Dollars, as a deterrent to the future commission of acts impinging upon the statutorily and constitutionally protected rights of employees of the United States Postal Service and that the award and judgment be that the Defendants DeVarney, Klassen and the United States Postal Service be determined jointly and severally liable for the compensatory and punitive and exemplary damages hereinbefore requested, and, Plaintiff further prays

(e) That the Court grant such other and further relief as seems appropriate.

Dated at Burlington, Vermont this 26th day of June 1974.

THE PLAINTIFF

BY_____

Thomas L. Hayes
200 Main Street
Burlington, Vermont
-His Attorney-

Other carriers
Petitioner et,
No mention of
Hold.

STATE OF VERMONT

COUNTY OF CHITTENDEN

VERIFICATION

John W. FitzGerald, being duly sworn, deposes and says that he is the Plaintiff in the within action; that he has read the foregoing complaint and knows the contents thereof; that the same is true to the best of his knowledge and belief, except as to matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

JOHN W. FITZGERALD

Sworn to before me this 26th day of June, 1974.

NOTARY PUBLIC

DISTRICT COURT
DISTRICT OF VERMONT
FILED
FEB 17 12 45 PM '76
CLERK
BY
DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

John W. FitzGerald	:	
	:	
v.	:	Civil Action
	:	
Donald R. DeVarney, individually and in his capacity as Postmaster of the Post Office in Milton, Vermont,	:	File No. 74-164
	:	
Elmer J. Klassen, individually and in his capacity as Postmaster General of the United States Postal Service,	:	
	:	
Raymond A. Gordon, individually and in his capacity as a Rural Carrier with the Post Office in Milton, Vermont and	:	
	:	
The United States Postal Service, an independent establishment of the Executive Branch of the Government of the United States	:	

FINDINGS OF FACT, OPINION AND ORDER

Plaintiff John W. FitzGerald, a former rural letter carrier for the United States Post Office Department,[1] brings this action seeking enforcement of his purported reemployment rights as a veteran under the Selective Service Act of 1967. 50 U.S.C. App. § 459. In addition to reinstatement as an employee, compensatory and exemplary damages in excess of $10,000 have been requested against all but one defendant. In response, the defendants maintain that FitzGerald does not have any statutory reemployment rights as he had been dismissed from the Post Office Department in

as he had been dismissed from the Post Office Department in 1970. The resolution of this matter depends upon the validity of that 1970 discharge. Federal jurisdiction to decide this

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question may be premised alternatively under 28 U.S.C. §§ 1331, 1339 and 31 U.S.C. § 409(a). See generally White v. Bloomberg, 345 F. Supp. 133, 140-141 (D. Md. 1972), aff'd 501 F.2d 1379 (4th Cir. 1974).

FINDINGS OF FACT

The plaintiff, a resident of Milton, Vermont, was employed by the United States Post Office Department and its successor, defendant United States Postal Service, from December 15, 1959, to November 2, 1970 as a rural letter carrier with the Milton Post Office. Defendant Donald R. DeVarney has been the postmaster of that office since 1966. Defendant Elmer J. Klassen was the Postmaster General of the United States Postal Service at the time this action was brought. Defendant Raymond A. Gordon presently holds the position of rural letter carrier which was formerly held by plaintiff. Since plaintiff's departure from the Postal Service, he has been on virtually continuous active duty with the Air National Guard.

As a member of the National Guard prior to his departure from the Postal Service, plaintiff was required to perform 15 days of annual training (AT) plus 48 periods of

departure from the Postal Service, plaintiff was required to perform 15 days of annual training (AT) plus 48 periods of inactive training duty known as Unit Training Assemblies (UTA). UTAs were customarily held on weekends with each weekend period being the equivalent of 4 UTAs. Missed UTAs could be made up by performing equivalent training (ET) at times when the Air Guard unit was engaged in appropriate

activities. In addition, in order to maintain minimal proficiency, flying air crewmen such as plaintiff were expected to participate in 36 Additional Flying Training Periods (AFTP) lasting approximately four hours each. Finally, the National Guard Unit itself was often assigned to perform 24 hour watches known as Air Defense Command Alerts (ADC alerts). Since the availability of active personnel on full-time active duty was sufficient to meet only fifty to sixty percent of the manpower requirements for these alerts, participating air crews were frequently augmented by part-time guardsmen such as plaintiff who would volunteer for this type of activity. While participation in ADC alerts by part-time guardsmen was not mandatory, everyone in plaintiff's unit was expected to shoulder some of the burdens occasioned by this duty. Participation in these alerts would tend to increase an airman's proficiency, and if done on a frequent basis, could further an individual's National Guard career.

As a postal employee, FitzGerald was entitled to 15 days with pay annual military leave to perform active duty for training. He was also entitled to 26 days annual leave (with pay) which could be used in any manner desired.[2/] In plaintiff's case, 90 to 95 percent of his annual leave time was devoted to serving with the National Guard. Any National Guard duty performed by plaintiff other than during periods of military or annual leave had to be performed either by securing leave without pay (LWOP) or simply by being absent without leave (AWOL) from the Postal Service. Of course, military duty could also be performed on plaintiff's own time, notably weekends, but because FitzGerald was originally

stationed with the Maine National Guard[3] and because his normal work week included Saturdays, this option was not always a practical one since it required lengthy trips to and from Maine for the purpose of performing just one day of military service. Nevertheless, plaintiff frequently performed military duty on Sundays without having to request any leave time.

Plaintiff's difficulties with Postmaster DeVarney centered around FitzGerald's involvement in National Guard activities and his frequent use of leave time for that purpose. While plaintiff generally had been able to perform his military duties with little interference from DeVarney,[4] relations between the two men had been strained since 1966 when FitzGerald competed unsuccessfully against DeVarney for the postmastership of the Milton Post Office. In 1968, upon FitzGerald's return from a two week tour of active duty in Vietnam, there was a disagreement concerning the amount of leave time which had been requested and authorized for that occasion. At that time, DeVarney indicated that he would no longer approve plaintiff's requests for LWOP to perform National Guard duties, and on November 27, 1968 FitzGerald received a letter of warning for his failure to secure leave approval before absenting himself from the Postal Service.

In 1970, the relationship between FitzGerald and the Postmaster deteriorated rapidly as they were unable to reach agreement concerning plaintiff's National Guard duties and the procedures required for requesting leave from employment. That May, plaintiff volunteered on a blanket

basis for all ADC alerts,[5/] and requested LWOP for one year to perform active duty with the National Guard. DeVarney denied this request, relying upon "the needs of the Postal Service" as his justification.

On June 10, 1970, DeVarney sent FitzGerald an official letter of warning which notified plaintiff that he was considered AWOL for May 7th because of his failure to comply with the postmaster's request that performance of National Guard duties be subsequently substantiated by filling out a Postal Service 3971 form. On June 12, 1970, another letter of warning was issued, this time citing plaintiff's failure to comply with the requirement imposed by Postal Manual § 721.75 that, upon completion of military duty, employees granted military leave must supply their supervisor with a copy of orders covering such service. On June 15, 1970, DeVarney wrote yet another letter of warning informing FitzGerald that he was AWOL for June 13th because of his failure to request advance authorization for leave on that date. Finally, by letter dated June 18, 1970, DeVarney denied FitzGerald's June 16th request for military leave. Though plaintiff had submitted his request on Air Force Form 417, DeVarney's letter stated, inter alia, that "until such time as your requests are presented on the required Form 3971, and are accompanied by a copy of the official orders 'activating' you, all requests of this nature will be denied."

On June 22, 1970, plaintiff responded with individual letters of explanation to the various warning

notices and DeVarney's letter of June 18th. FitzGerald did substantiate that he had performed National Guard duties on the dates in question, but copies of his orders were not provided. He also referred DeVarney to various regulations which assertedly established his right to LWOP for military purposes. Significantly, these letters, as well as later correspondence from FitzGerald to DeVarney contained statements and language which were at best intemperate, and which could only have exacerbated the strained realtionship between plaintiff and his superior. Near the end of June, the situation deteriorated even further when FitzGerald, at a public meeting of Milton residents, successfully challenged DeVarney's right to serve simultaneously as postmaster and as a member of the local school board. This action forced DeVarney to resign from the school board position which he had held since 1966 and to which he had just been reelected.

At about this time, plaintiff began to file requests for LWOP with greater frequency. These requests were for permission to go on active duty for varying periods of less than 30 days. FitzGerald continued to file such requests until November 2, 1970 when he went on active duty with the National Guard for a period of slightly less than two years. Even though these requests were always submitted on Form 3971 as required by Postal Manual § 721.55, they were invariably denied by DeVarney because of the "needs of the Postal Service." For example, on June 29, 1970 the postmaster sent FitzGerald a letter of warning which referred to a letter

dated June 18th informing the plaintiff that LWOP requests "for training not accompanied by Military orders 'activating' . . . [him] would be denied." On this basis, FitzGerald was informed that DeVarney considered him to be AWOL for June 23rd because of his failure to request leave in advance and for three subsequent days in June in which he had absented himself for National Guard duty despite the postmaster's refusal to authorize LWOP.

In contrast, although there were occasional difficulties, DeVarney's general practice was to approve requests for annual or military leave without requiring a prior submission of duplicate orders.[6/] The disparate treatment afforded to requests for LWOP was rigidly adhered to despite the difficulties incurred by plaintiff in obtaining advance copies of his orders. As a general rule, no orders were issued for ETs, UTAs, or AFTPs, and on those occasions when orders were issued they typically were not cut far in advance. Moreover, FitzGerald's problems were somewhat compounded because his inclination to volunteer for active duty on relatively short notice tended to preclude the National Guard from making his orders available at all prior to the day his duty was to be performed. FitzGerald customarily picked up his orders in his National Guard mail box when he reported for duty.

Throughout the summer and autumn of 1970, plaintiff performed his National Guard duty in virtually every instance that his requests for LWOP were denied.[7/] On each occasion,

DeVarney considered him AWOL. FitzGerald maintained that the regulation did not require LWOP requests to be accompanied by advance orders, but whenever the two adversaries discussed their differences they were unable to effect a resolution. Plaintiff's efforts to resolve this situation by contacting other postal officials, seeking the assistance of union representatives, and attempting to trigger the union's grievance machinery were likewise unsuccessful. Although not explicitly stated at the time, DeVarney plainly felt that FitzGerald's primary obligation was to the Postal Service and that any responsibilities he had to the National Guard were to be subordinated in that regard. For this reason, plaintiff's requests for LWOP were always denied when they pertained to activity which the postmaster considered, at times mistakenly, to be of a voluntary nature. It is equally clear, however, that, in fact, FitzGerald did allocate a higher priority to his National Guard duties, and had the unrealistic expectation that his requests for inordinate amounts of LWOP would be met with complete equanimity by his superior.

On July 17, 1970 DeVarney issued a Notice of Proposed Adverse Action to the plaintiff because of his absences without leave on June 30 and eleven days in the month of July. In each instance, plaintiff's requests for LWOP, properly submitted on Form 3971, had been summarily denied with only the terse explanation: "needs of the Postal Service." When subsequent efforts to end the controversy failed, DeVarney issued a Notice of Adverse Action dated

July 29, 1970 advising FitzGerald that the charges against him had been sustained and informing him that he would be removed from the rolls of the Postal Service effective August 21, 1970. On August 5, 1970 plaintiff appealed this decision to the Regional Director of the Post Office Department, but aside from a procedural defect which served to defer the time of his dismissal, the adverse action taken by DeVarney was sustained. However, because of the procedural defect, FitzGerald was able to appeal to the Regional Director a second time. In his appeal of August 31, 1970, he requested only a review of the facts and waived any further hearing. A Hearing Officer-Investigator reviewed the case, and on October 13, 1970 submitted findings which supported the postmaster's conclusion that FitzGerald had repeatedly been AWOL. These findings were then forwarded to the Regional Director.

Shortly thereafter, and while his appeal to the Regional Director was still pending, plaintiff began his extended tour of active duty with the National Guard. Though FitzGerald had been issued orders regarding this action on October 13th, he did not inform DeVarney of his plans to enter full-time active duty, nor did he supply the postmaster with a copy of his orders. Nevertheless, it was common knowledge at the [illegible]on Post Office that plaintiff had gone on active duty, and it is apparent that DeVarney must have known of this development. If anything, it is fair to say that by this time FitzGerald realized the futility of of submitting any further requests for LWOP to DeVarney.

On November 3, 1970, just one day after plaintiff began his full-time status as a Guardsman, the postmaster issued another Notice of Proposed Adverse Action to FitzGerald for some 51 acts of AWOL during the period July 15th through October 15, 1970. Again, these absences had resulted because of plaintiff's insistence on performing his National Guard duties on occasions when his properly submitted requests for LWOP had been denied. DeVarney sustained these 51 charges on November 15th and advised FitzGerald that he would be removed from the rolls on December 11, 1970. Although he was on active duty, plaintiff appealed this decision to the Regional Director as well. On April 13 and May 24, 1971 respectively, the Regional Director sustained the two adverse actions brought by DeVarney. The Regional Director's April 13th decision was affirmed by the Board of Appeals and Review of the United States Postal Service by letter dated August 31, 1971.[8/]

FitzGerald was released from active duty on August 17, 1972, and applied for reemployment with the Milton Post Office approximately two weeks later. His request was denied on the basis of the August 31, 1971 decision of the Board of Appeals and Review of the Postal Service. From September 1, 1972 through the time that this suit was initiated, plaintiff diligently pursued available administrative procedures in an attempt to secure his former position. He did fail to take an appeal to the Civil Service Commission as provided by law, but this omission was occasioned by the Postal Service's failure to comply with the

requirement contained in 5 C.F.R. §§ 353.406 that unsuccessful applicants be informed of their appeal rights. Since the date of the Postal Service's refusal to reinstate him, FitzGerald has been on more or less full-time active duty with the National Guard earning a salary which substantially exceeds what he would have made as a rural letter carrier. 9/

CONCLUSIONS OF LAW AND DISCUSSION

Under the circumstances of this case, FitzGerald's failure to exhaust the administrative remedy set forth in 5 C.F.R. §§ 353.406 is excusable because he was ignorant of this right, and the Postal Service did not meet its obligation of informing him that such an opportunity existed. As to the merits of this action, it is initially necessary to note that 50 U.S.C. App. § 459, upon which plaintiff has placed great reliance, was substantially repealed on December 3, 1974. Pub. L. 93-508, Title IV, § 405(1). The sections previously contained in § 459 have been modified somewhat, and transferred to Chapter 43 of Title 38 dealing with "Veteran's Reemployment Rights." 38 U.S.C. §§ 2021 et seq. (1974). However, since § 459 was in effect when plaintiff first sought reemployment with the Postal Service and at the time that this suit was brought, that provision is determinative of his rights. Moreover, the modifications now contained in Title 38 have been reviewed by the Court, and it is clear that they would not change the outcome of this case. Parallel citations to each set of provisions are occasionally given in the discussion which follows both to verify this and to

assist in the interpretation of pre-existing law.

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Ultimately, plaintiff's right to relief is dependent upon a two stage analysis. First, it is necessary to determine whether statutory reemployment rights have been conferred upon one in his position, and then the Court must consider whether this right has been violated in this particular instance. Applying this analysis, it is clear that FitzGerald does have reemployment rights by virtue of 50 U.S.C. App. § 459(g)(2)(A), which provided, in relevant part as follows:

> Any person who, after entering the employment to which he claims restoration enters upon active duty (other than for the purpose of determining his physical fitness and other than for training) whether or not voluntarily, in the Armed Forces of the United States . . . in response to an order or call to active duty shall, upon relief from active duty under normal conditions, be entitled to all of the reemployment rights and benefits provided . . . in the case of persons inducted under the provisions of this title . . . .

See 38 U.S.C. § 2024(b)(1).

This provision, of course, extends to any tours of full-time active duty engaged in by National Guardsmen, and was clearly applicable to the period of active duty which plaintiff commenced on November 2, 1970. See 50 U.S.C. App. §§ 459(g)(2)(B), 466(i); 38 U.S.C. § 2024(2). While plaintiff should have complied with the Postal Service's requirement that requests for LWOP in excess of 30 days be filed on Form 3971 "accompanied by a written justification and statement of reasons for the desired absence," Postal Manual § 721.55, his failure to do so is understandable in light of DeVarney's history of turning down all requests

for LWOP.[10/] Since strict compliance with postal regulations would have been a meaningless futility under such circumstances, it would be inappropriate to deprive FitzGerald of his statutory rights on this basis. Moreover, the Civil Service Commission itself has indicated that no federal agency is "relieved of its obligation to restore an employee solely because . . .[t]he agency did not release the employee for military duty or did not know the employee went on military duty." Federal Personnel Manual, Appendix B-5, at 353-B-2.

Plaintiff then, in theory, is entitled to the reemployment rights conferred by statute, but whether he may assert them depends upon the validity of his original dismissal. The existence of statutory reemployment rights would not avail a former employee who was properly discharged prior to beginning his tour of active duty; § 459 was not intended to provide a means of compelling restoration to a position which has already been lost. In the instant case, however, it is clear that FitzGerald's dismissal was invalid on both substantive and procedural grounds. As a procedural matter, the Postal Service should have held any adverse action brought against the plaintiff in abeyance pending his return from military duty. Federal Personnel Manual, Appendix A, at 353-A-1.[11/] Substantively, the dismissal must be invalidated because the law clearly required DeVarney to grant FitzGerald's requests for LWOP, however unreasonable they may have appeared, during the period of June 30th through October 15, 1970.

Under postal regulations in effect at the time of this controversy, authorizing LWOP was generally considered a matter of administrative discretion with the proviso that it had to be granted in the case of "National Guardsmen who are entitled to LWOP, if necessary, to perform military training duties under the provisions of section 9(g) [§ 459(g)] of the Military Selective Service Act of 1967." Postal Manual § 721.521. Although this regulation speaks only of military training duties, reference to other postal regulations indicates that this term was to be broadly construed and did cover activities such as ADC alerts. For example, the regulations consistently required LWOP to be granted under the following circumstances:

> [1]. Postal officials must permit employees to participate in monthly drills or meetings scheduled by the National Guard or reserve units of the Armed Forces, to attend the usual summer training period, and in addition any other active duty ordered by the National Guard and other reserve units.

Postal Manual § 721.7 (emphasis added).

> [2]. Members of the reserve components of the Armed forces [including the National Guard] (721.74) ordered to active military duty for training or for any other purposes, for a specified period of time not to exceed 1 year but in excess of the total time allowable under military leave and annual leave (721.71 and 721.761) shall be granted LWOP.

Postal Manual § 721.542(k)(emphasis added).

Neither Postmaster DeVarney nor the various administrative authorities who reviewed this case thought that these regulations extended to National Guard duty of a voluntary nature. In this regard they were mistaken both as to the facts of this case and the law which governs it.

Most of the LWOP requests submitted by FitzGerald merited automatic extension of LWOP under § 459(g)(4) since they were for training duty such as UTA or AFTP which was actually required by the National Guard in order to maintain continued good standing.[12/] Similarly, it is clear that participation in ADC alerts was a virtual requirement of most guardsmen. Admittedly, plaintiff's readiness to participate in these alerts on a blanket basis was most unusual, if not extreme, but even so, his right to do so was protected by § 459(g)(2) cited supra. Significantly, that section made no distinction between voluntary and involuntary activity. Its application was automatically triggered by an order from the appropriate military authorities. Here, in virtually each instance for which plaintiff was cited as AWOL during the June through October 15th period, he had been ordered to active duty pursuant to 10 U.S.C. § 672(d), a provision which specifically recognizes the right of a National Guardsman to volunteer for such duty.[13/] Accordingly, the multiple AWOL citations incurred by FitzGerald during that time span afforded an invalid basis for removing him from the Postal Service.

Nor can plaintiff's dismissal be sustained because of his failure to furnish a copy of his military orders with his requests for LWOP. This requirement, imposed by DeVarney, was not authorized by any regulation. Postal regulations then in effect required only that requests for LWOP be submitted on Form 3971, and during the relevant period plaintiff complied with this requirement at all times. See Postal Manual § 721.55. Form 3971 itself merely contains a

section requiring the employee to indicate what type of leave is being requested, but there is no language on the form which suggests that copies of military orders should be attached when leave is being sought for that purpose. While it seems that requests for LWOP in excess of 30 days must be accompanied by a copy of orders, this requirement was not applicable to plaintiff's request for LWOP since, with certain notable exceptions (i.e. LWOP for one year of active duty), they always involved fewer than 30 days. See Postal Manual § 721.55. It appears that Postmaster DeVarney incorrectly confused his authority to require substantiation of requests for military leave (upon completion of such service) with his relatively limited authority in LWOP cases. Compare Postal Manual §§ 721.521, 721.55 with § 721.75.

In conclusion, while it is clear that plaintiff was at times taking undue advantage of the law in order to participate in National Guard activities, Postmaster DeVarney was without discretion to control FitzGerald's conduct in this regard. Since plaintiff's reemployment rights have been violated, he is entitled to immediate reinstatement with the United States Postal Service. See 50 U.S.C. App. § 459(b)(e); 38 U.S.C. §§ 2021, 2023.

RELIEF

Since plaintiff's former position as a rural letter carrier has been permanently filled, it would be impractical to require reinstatement to that same position. In this regard, plaintiff testified at trial that he would accept a comparable position within general commuting distance of

Not really

of his home,[14] and this is all that should be required of the Postal Service. In all other respects, such restoration must be in accordance with 50 U.S.C. App. § 459(e)(1) and the implementing regulations imposed by the Civil Service Commission in the Federal Personnel Manual (subchapter 4).[15] See also 38 U.S.C. § 2023. The plaintiff is entitled to all reemployment rights and benefits including, but not limited to, health insurance,[16] life insurance,[17] retirement benefits, leave rights,[18] and seniority status, which he would have attained had he been reinstated to his former employment in 1972.

Once this relief has been accorded, plaintiff is entitled to no further relief. The evidence does not support a claim for exemplary damages[19] against Postmaster DeVarney or any other defendant, and FitzGerald's claims for compensatory relief are either likewise unsupported by the evidence of simply lacking in rationality.[20] The Court will deal with these claims seriatim.

Since plaintiff served with the National Guard after his request for reinstatement with the Postal Service had been denied, at first blush it would appear that plaintiff would be entitled to additional compensation by way of damages at the rate of pay he would have earned in the Postal Service for those days that he would have been entitled to take military leave and annual leave for military purposes from the Postal Service. In this regard, plaintiff established that 15 days military leave were allowed each year, and that, in addition, he spent approximately ninety percent of his

annual leave performing military duty. When ninety percent of the annual leave time which would have been available to plaintiff[21] is added to the number of days of annual military leave which he could have taken and the resulting number is multiplied by what his rate of pay from the Postal Service would have been from September 1, 1972 until the day of trial,[22] the resulting number is $6,135.42.[23] There are, however, several reasons why plaintiff is not entitled to recover this amount. The first is that neither the Back Pay Act, 5 U.S.C. § 5596, nor § 459(e) or its successor, whichever is applicable,[24] authorizes recovery of the monetary equivalent of an individual's accumulated leave time. See Ainsworth v. United States, 399 F.2d 176, at 183 (Ct. Cl. 1968)(interpreta- of Back Pay Act). Moreover, both of these provisions are consistent with the common law principle of mitigation[25] which traditionally has required that any amounts received through other employment sources are to be deducted from the amount recoverable by way of lost compensation.[26] Here, the $6,135.42, when combined with the total postal salary that plaintiff would have earned had he been reemployed on September 1, 1972, ($41,458.57),[27] does not equal the amount which he earned while on full-time military duty during the period in question ($55,070.47 excluding housing allowance).[28] Nor would a different result obtain if the latter sum of $55,070.47 were compared with the total of plaintiff's postal salary during the period cited plus the amount he would have received from the National Guard for services rendered on

military or annual leave time during that same period. Accordingly, since there has been no loss, there can be no compensation.

Next plaintiff claims that he is entitled to a $300.00 bonus payment which was given as a settlement for a strike in 1971. The terms or conditions on which such payment was made do not appear from the evidence, but in any event, since it is clear that FitzGerald was not working for the Postal Service in 1971, he is not entitled to any strike pay for that year. As to his claim for overtime pay which he would have earned during the 1972 and 1973 season, it too must be disallowed since there was no evidence introduced to indicate that if this money had been received his total income from the Postal Service would have exceeded the actual amount of his military pay.

Finally, FitzGerald's remaining claims can be disposed of with little discussion:

1. His claim for interest payments amounting to $10,000 on funds which he was obliged to borrow between September 1, 1972 and the date of trial, purportedly because of the Postal Service's failure to reemploy him, is rejected as too speculative for consideration and because of the absence of any causal connection between the failure to reinstate him and the funds which were borrowed. For example, much of the interest resulted from funds which were borrowed to purchase two different homes in Maine which plaintiff owned simultaneously with his home in Milton, Vermont. Plaintiff initially purchased a home in Maine so

that he could have his family with him. Thereafter he purchased a second house because his wife was dissatisfied with the first one. During this period he did not rent his home in Milton.

2. His claim that he is entitled to a daily mileage allowance for transportation from his home in Maine to his National Guard duty station must be denied because it bears no rational relation to the failure of the Postal Service to restore him. Postal employees are given allowances for travel expenses incurred while actually on the job but not for their commuting expenses from home to their place of work. Accordingly, there is no reason why plaintiff should receive any compensation for commuting expenses during his National Guard service.

3. His claims for mental anguish and for damage to his reputation caused by his dismissal are without credible evidence to support them, and consequently must be denied.[29/]

4. Finally, the claim for $2,451.00 for expenses incurred by plaintiff as a result of his efforts to establish his reemployment rights must be rejected since monies spent in this manner are akin to litigation expenses, and therefore do not constitute a compensable item of damages. See D. Dobbs, supra note 23, at 194.

Accordingly, plaintiff's relief must be limited to full reinstatement in the manner indicated.

WHEREFORE, judgment is entered in this cause against the plaintiff for defendants DeVarney, Klassen and Gordon and

for the plaintiff against defendant United States Postal Service to the extent of reinstatement to a position with the Postal Service as herein provided.

Dated at Burlington in the District of Vermont, this 17th day of February, 1976.

District Judge

FOOTNOTES

1/ The Postal Reorganization Act of 1970 abolished the Post Office Department and transferred its powers to the United States Postal Service. Effective July 1, 1971, the Act established the United States Postal Service "as an independent establishment of the executive branch of the Government of the United States . . . ." 39 U.S.C. § 201.

2/ Because of the so-called "Saturday" rule which was in effect until November 1, 1973, the number of leave days actually available could be stretched significantly. Under this rule, Saturdays at the beginning, middle, or end of any leave period of five or more consecutive days would not be counted as leave time. Therefore, using the rule to the fullest advantage would result in 36 days off for 26 days of annual leave. However, after November 1, 1973, only one-half the Saturdays were subject to this rule because FitzGerald's former mail route was changed to a five and one-half instead of a six day week, thereby reducing the amount of extra leave time to be gained from this rule to five days. Prior to his departure from the Postal Service, FitzGerald habitually took advantage of the "Saturday" rule.

3/ Plaintiff was stationed with the Maine Air National Guard until February, 1974 when he transferred to the Vermont Air National Guard.

4/ For example in 1967, plaintiff was given LWOP for one year so that he could perform active duty with the National Guard. This duty actually was performed in two six month stretches separated by one day of inactive duty in order to comply with certain National Guard requirements.

5/ Volunteering for such duty on a blanket basis is unusual since most individuals attempt to arrange their military responsibilities in a manner which does not interefere with their civil employment.

6/ Although it is clear that plaintiff did experience incidental difficulties related to his requests for military and annual leave, the Court does not consider them significant for purpoes of this opinion. Consequently, attention has been focused on FitzGerald's difficulties regarding LWOP.

7/ On those occasions when plaintiff was absent from his postal duties, his route was satisfactorily covered by Robert Stebbins, a substitute carrier.

8/ The record does not indicate whether the May 24th decision was also appealed, but no finding in this regard is necessary to resolve this case.

9/ See notes 21-23, 27-28 and accompanying text infra.

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10/ In addition to the many requests (discussed supra) for LWOP for periods of less than 30 days which were denied by DeVarney, the postmaster had turned down plaintiff's requests for LWOP for one year periods on at least two prior occasions.

11/ While the Court could rectify this procedural error simply by directing that FitzGerald be reinstated (with an award of damages, if any, to date) and then letting the adverse action proceed against him anew, the fact that plaintiff's dismissal was substantively invalid as well mandates the adoption of a different course.

12/ 50 U.S.C. App. § 459(g)(4) provided, in relevant part, as follows:

> Any employee not covered by paragraph (3) of this subsection who holds a position described in paragraph (A) or (B) of subsection (b) of this section shall upon request be granted a leave of absence by his employer for the period required to perform active duty for training or inactive duty training in the Armed Forces of the United States. Upon his release from a period of such active duty for training or inactive duty training, or upon his discharge from hospitalization incident to that training, such employee shall be permitted to return to his position with such seniority, status, pay, and vacation as he would have had if he had not been absent for such purposes.

13/ 10 U.S.C. § 672(d) provides, in relevant part, as follows:

> At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member.

14/ The Court considers 35 miles or less to constitute general commuting distance from plaintiff's home.

15/ It appears to the Court that in all likelihood the Postal Service will be able either to restore plaintiff to his former job or to place him in a similar capacity at a relatively convenient Post Office located within 35 miles of his home, and to comply with the statute and applicable regulations in all respects. If this is not accomplished in a satisfactory manner, it will become necessary for the Civil Service Commission to implement this relief as provided by statute.

16/ The plaintiff testified that the Postal Service contributed a certain percentage of the premiums for insurance on his life, but this policy was not continued when his

employment was terminated and there is no evidence that he substituted another. Since plaintiff is still alive, he has suffered no loss as a result of the Postal Service's failure to maintain its payments in this regard. Assuming this insurance to have been term insurance without cash value, its present reinstatement at a premium cost no less favorable than that which he would be obliged to pay if the policy had been in continuous effect since September 1, 1972 would restore plaintiff to the status he enjoyed prior to discharge.

17/ The plaintiff testified that the Postal Service contributed a certain amount toward his civil service retirement fund for each pay period in which he made contributions to this fund. Allowing the plaintiff retirement benefits from September 1, 1972 will provide him with credit for the Postal Service's contribution to the fund on his behalf as though he had been reemployed on September 1, 1972.

18/ The plaintiff testified that as a postal employee he was entitled to certain sick leave benefits which were lost because he was not reemployed. Restoration of his sick leave benefits as of September 1, 1972 will provide him with the sick leave protection to which he is entitled. He is also entitled to accumulated leave time within the limits, if any, set by statute or applicable postal regulations.

19/ Plaintiff alleged on information and belief that the actions of defendants DeVarney and Klassen "were malicious and undertaken with a wanton and reckless disregard of the consequences flowing therefrom, resulting in great impairment of the plaintiff's status and reputation." In addition to the fact that no evidence was specifically introduced to support this charge, the Court finds not only that Postmaster DeVarney did not act maliciously or with wanton and reckless disregard of plaintiff's rights, but rather that at all times he acted in good faith to further the best interests of the Postal Service. Moreover, he did so in the face of some rather intemperate accusations by plaintiff which could hardly have failed to provoke any reasonable person. The fact that DeVarney erred in regard to his authority with regard to requests for LWOP does not detract from this finding.

20/ For this reason, there is no need to consider the defense of official immunity.

21/ Applying the so-called "Saturday" rule, note 2, supra, FitzGerald would have received the following number of annual leave days with pay:

September 1, 1972 - December 31, 1972	10 2/3
1973	36
1974	31
January 1, 1975 - August 8, 1975	18

22/ From September 1, 1972 through August 7, 1975, the daily rate of pay increased as follows:

September 1, 1972 - October 31, 1972	$ 34.50
November 1, 1972 - October 31, 1973	39.94
November 1, 1973 - October 31, 1974	45.33
November 1, 1974 - May 10, 1975	53.12
May 11, 1975 - August 8, 1975	54.38

23/ By pro-rating the days available for military and annual leave, the following amounts are yielded for the calendar periods indicated:

September 1, 1972 to October 31, 1972	$ 372.60
November 1, 1972 to December 31, 1972	511.23
January 1, 1973 to October 31, 1973	1,577.63
November 1, 1973 to December 31, 1973	337.70
January 1, 1974 to October 31, 1974	1,627.35
November 1, 1974 to December 31, 1974	371.84
January 1, 1975 to May 10, 1975	738.89
May 10, 1975 to August 8, 1975	598.18
	$ 6,135.42

24/ Application of the Back Pay Act to the Postal Service seems to be excluded by the Postal Reorganization Act, 39 U.S.C. § 410. See also 39 U.S.C. § 1005; White v. Bloomberg, 501 F.2d 1379, n.2 (4th Cir. 1974). § 410 provides that its exclusions do not preclude those federal statutes which are given continued effect by the Postal Service itself through its own regulations. However, it is not necessary for the Court to determine whether the Back Pay Act still applies to the Postal Service as a result of this exception because, at the very least, it is clear that the exclusions provided in § 410 do not extend to the reemployment rights conferred by federal law. While § 410 on its face provides that no federal laws "dealing with" federal employees shall apply to the Postal Service, this exclusion obviously was not intended to extend to statutory rights such as those involved here which were promulgated in the context of extremely broad legislative enactments (i.e., The Selective Service Act of 1967 and the Vietnam Era Veterans' Readjustment Act of 1974) that were only incidentally concerned with federal employees. Moreover, the fact that § 410 was never intended to reach veterans' reemployment rights may be fully inferred from the recent modification contained in 38 U.S.C. § 2023 which specifically brings the Postal Service within the scope of the reemployment statute.

25/ See D. Dobbs, Remedies 925 (1974).

45

In this particular case, common law principles governing the award of damages would apply in the absence of legislation specifically authorizing such an award because the Postal Reorganization Act, 39 U.S.C. § 401(1), provides for suits against the Postal Service, and such a provision would have little effect if it did not subject the Postal Service to liability for damages. See generally White v. Bloomberg, 345 F. Supp. 133, 142 (D. Md. 1972), aff'd 501 F.2d 1379 (4th Cir. 1972).

26/ For example, the Back Pay Act, 5 U.S.C. §§ 596(b), provides in relevant part, as follows:

> (b) An employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action that has resulted in the withdrawal or reduction of all or a part of the pay, allowances, or differentials of the employee--
>
> (1) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect an amount equal to all or any part of the pay, allowances, or differentials, as applicable, that the employee normally would have earned during that period if the personnel action had not occurred, less any amounts earned by him through other employment during that period; and
>
> (2) for all purposes, is deemed to have performed service for the agency during that period, except that the employee may not be credited, under this section, leave in an amount that would cause the amount of leave to his credit to exceed the maximum amount of leave authorized for the employee by law or regulation.

See 50 U.S.C. App. § 459(e)(1); 38 U.S.C. § 2023.

27/ The evidence disclosed that plaintiff would have earned the following amounts had he been with the Postal Service during the period in questions:

September 1, 1972 - December 31, 1972	$ 3,870.88
1973	12,889.79
1974	14,593.37
January 1, 1975 - August 8, 1975	10,104.53
	$ 41,458.57

28/ Plaintiff's income from the military (excluding his $250.00 monthly quarters and subsistence allowance) since September 1, 1972 was as follows:

September 1, 1972 - December 31, 1972	$ 4,885.18
1973	17,157.78
1974	19,738.03
January 1, 1975 - August 1, 1975	13,289.48
	$ 55,070.47

29/ The plaintiff testified that his difficulties with the Postal Service brought about a constant state of depression which caused him to lose sleep and to be generally upset. This testimony, however, was uncorroborated by medical evidence of any sort. Indeed, plaintiff has required no medical treatment or assistance, has had no difficulty passing Air National Guard physical examinations, and remains qualified for flying duty. Without deciding whether so-called mental anguish would give rise to a claim for damages under circumstances such as these, the Court has no difficulty in deciding that the plaintiff has failed to sustain his burden of proof with regard to this issue.

THE COURT. Mr. Hayes, are you ready to proceed?

MR. HAYES. Yes, your Honor.

THE COURT. Did you have any discussion with counsel for the defendants with reference to the damages in this matter?

MR. HAYES. Your Honor, we showed to both counsel for the defense the basis on which we calculated our damages, and I believe that I was out of the room during part of it, but I believe he went over every item of damage with defense counsel and no negotiations resulted therefrom.

THE COURT. Then I take it, it is necessary to take evidence on all of the items of damage, is that correct?

MR. REED. Yes, your Honor. We expedited matters somewhat because we understand Mr. Fitzgerald's theories on why he is making these claims. We believe we can produce a counter case on this.

THE COURT. Proceed.

MR. HAYES. We call Mr. Fitzgerald to the stand.

JOHN W. FITZGERALD resumed the stand for continuation of DIRECT EXAMINATION.

Q (By Mr. Hayes) Mr. Fitzgerald, I show you a paper marked

Plaintiff's "1R" and I ask you if you can identify that? (Handed to the witness)

A. This is a memo given to me by Postmaster Devarney in July of 1970, and it states that the enclosed check includes payment for two days military leave.

Q And, for what two days of military leave was this payment for?

A. For the 5th and 6th of June.

MR. HAYES. We ask "1R" be admitted in evidence.

MR. REED. No objection, your Honor.

THE COURT. Admitted.

(Plaintiff's Exhibit "1R" was received in evidence.)

Q (By Mr. Hayes) Now, Mr. Fitzgerald, you mentioned that this was an indication that you had been paid for the 5th and 6th of June of 1970?

A. Yes, that is correct.

Q And, it was payment for what, sir?

A. Payment for military leave for the 5th and 6th of June.

Q Were you charged in any of the letters of warning with any particular absence of any kind on the 5th and 6th of June?

A. I was charged with being AWOL on the 5th and 6th of June by a letter written--I believe it was the 12th of June that he wrote the letter, or the date of the 12th of June

was on the letter.

Q And, is an employee paid when he is AWOL?

A. Not to my knowledge.

Q So, that in fact proves you were paid by the Post Office Department for those days of military leave?

A. I was.

Q During the course of your testimony, Mr. Fitzgerald, and during the course of the investigations that were conducted, and during the course of your various communications with Mr. Devarney, you have made reference to certain Postal Regulations. I show you an exhibit marked Plaintiff's "1Q" and ask you to review it. (Handed to the witness) Are these the Postal Regulations to which you made reference?

A. Yes, they are.

Q These are regulations you brought to the attention of Postmaster Devarney at the time there was a dispute over whether or not you could take these various days off?

A. They are.

MR. HAYES. And, if I may, your Honor, it would only take a brief moment, I wonder if I could ask the plaintiff to read one paragraph into the record regarding these regulations, because it goes to the thrust of our case.

MR. REED. Your Honor, we are willing to not object to the fact the Postal Regulations in effect at that

time would be admissible evidence and, obviously, pertinent to the Court's consideration in this matter.

THE COURT. Are you going to offer these Postal Regulations?

MR. HAYES. Yes, your Honor, I will offer them in evidence.

THE COURT. Have you seen these particular regulations?

MR. REED. No, your Honor, I haven't.

THE COURT. The Court can take judicial notice of any regulations in effect at that time. It might be helpful to have them in this form, if counsel are agreeable.

MR. REED. Your Honor, from the face of these documents, my only question would be if they were in effect at that time. There is nothing to indicate what date this is. Certainly, the Court will consider only the pertinent law and regulations on the matter.

MR. HAYES. May the record reflect at this time, your Honor, at the bottom of Page 1 of Plaintiff's Exhibit "1Q" there is an indication that the date of 10/30/68 is there, and the regulations went into effect on the bottom of Page 2 of the same exhibit, the same date, 10/30/68; that at the bottom of Page 3 of the exhibit, there is a date 11/3/69 indicating the date this went into effect,

and with respect to Page 4, the date 11/3/69.

MR. REED. Right. Of course, your Honor, that wouldn't prove anything as far as revisions go, but Mr. Levin informed me they were in effect at that time. I still pose the same objection to the necessity of reading them.

THE COURT. I don't know there is a necessity to read them, but it might help as far as continuity is concerned and speed the matter along. So, if it is one brief paragraph, let the witness read it. Any objection if they are admitted as an exhibit, just merely to get them into the record for ease of reference at a later time?

MR. REED. No objection, your Honor.

THE COURT. "1Q" is admitted.

(Plaintiff's Exhibit "1Q" was received in evidence.)

A. This Postal Regulation, Number 721.7, Military Leave. The congress has declared that the reserve units of the armed forces are maintained to provide trained units and qualified individuals for active duty in time of war or national emergency and at such other times as the national security may require. The law requires that employees entitled to military leave be granted such leave up to the legal maximum of fifteen calendar days. This leave may be taken for the usual summer two-weeks training period, or

for weekend training on base; when the employee is scheduled for duty, postal officials must permit employees to participate in monthly drills or meetings scheduled by the National Guard or Reserve Units of the Armed Forces, to attend the usual summer training period in addition to any other active duty ordered by the National Guard and other reserve units.

MR. REED. May I make an inquiry? What is the exhibit you termed "Postal Regulations"?

MR. HAYES. We have used the term "Postal Regulations". We understand they are regulations issued by the Post Office Department governing the employees that work for the department.

MR. REED. I have been informed that we object if it is termed "regulations," because there are regulations and a postal manual, and these are excerpts from what is called the postal manual. I believe the impact, legally, may be different.

THE COURT. Well, is somebody prepared to supply the Court with the Postal Manual, if that is where these came from, in effect on that date?

MR. REED. Your Honor, if the Court wants it, we will try to get it.

THE COURT. The Court doesn't particularly want it, Mr. Reed. We want to get before us what comprise

the pertinent regulations and anything that has a bearing on this case, and the easiest way to examine it later on. Now there are a number of regulations set out in some of the pleadings and memoranda that have been filed with the Court, and with the undertaking, of course, of our own examination and have to come back to counsel at some point and say we would like to know more about this, and could you supply it and anything that can expedite anything in the matter would be appreciated by the Court.

MR. REED. I am not objecting to their admission. I just want it noted it comes from a specific document rather than the other reference.

THE COURT. We'll note "1Q" is an excerpt from something called the Postal Manual.

MR. REED. Thank you, your Honor. We'll make every effort to supply it. The Postal Manual is a multivolume.

THE COURT. I don't see any reason to have the whole volume supplied to the Court, because the Court doesn't intend to read the entire manual. We just intend to get to the pertinent parts that may have a bearing on this case, and any way they are brought to the attention of the Court that will expedite a determination is all we are asking. We can take judicial notice, I am sure, of any regulations authorized under any United States Statute,

and I just don't want to have to go searching for them.

t I will ask counsel to bring tomorrow to the attention of the Court, one way or another, anyway, and this is one way of doing it. We'll make a note these are excerpts from the Postal Manual.

MR. HAYES. May we make a brief statement for the record. We have reviewed every document we can get ahold of in this case, including the transcript of the so-called investigations, and this is the first time, to our knowledge, there is an allegation as to Mr. Fitzgerald or any representative on his behalf, that these so-called regulations are not regulations and not binding regulations, if that is the nature of the allegation.

MR. REED. Your Honor, we have no objection. We believe they are pertinent and in force. I am trying to make a note as to what the terminology was.

THE COURT. "1Q" is admitted.

Q (By Mr. Hayes) Mr. Fitzgerald, I am not going to repeat the long preface I had to the previous question, but on a number of occasions that I just mentioned in the previous interrogation, you did make reference to several service regulations, and I show you Plaintiff's "1N" and ask you if you can identify it, and if those are the regulations to which you made reference? (Handed to the witness)

A. Yes, these are part of the Federal Personnel Manual to

which I made reference.

Q And, the Federal Personnel Manual is what, sir?

A. Civil Service's rules and regulations to cover all federal employees, and superceded, I was told, the Postal Regulations.

MR. HAYES. We ask Exhibit "1N" be admitted into evidence. There is some miscellaneous hand scratching on this, your Honor, which you should disregard. I do not have a clean copy.

MR. REED. Again, your Honor, defense can't, obviously, object to anything pertinent as far as regulations and laws of the United States. You can take judicial notice. We have no objection. Again, I don't know if those were in force at that time, but I don't object.

THE COURT. Why don't we admit "1N" and, of course, we'll do some further examination of our own.

(Plaintiff's Exhibit "1N" was received in evidence.)

Q (By Mr. Hayes) Mr. Fitzgerald, you subpoenaed for this Court, did you not, the so-called "Carrier Reports" and "Trip Carrier Reports"?

A. I did.

Q Tell the Court what they are, and what your examination of those reports has brought to your attention.

A. The Trip Carrier Reports are the time sheets for the

rural carrier. He records the times he reports for work, when he leaves the office, when he returns to the office, and the time that he completes his work at the office and leaves for home. He records the time out for lunch, if any is taken. On the far right of the column there is a remark space for other things or for remarks. There is a column for remarks.

Q And, during the course of your examination of these Trip Carrier Reports, did you discover anything that is relevant and bears on the testimony you gave yesterday?

A. Yes, they are.

Q Will you elucidate and tell the Court what those are?

A. May I refer to the ones that you have. I have the copy.

MR. HAYES. May he refer to the Trip Carrier Reports furnished by the defense, your Honor?

MR. REED. Your Honor, we furnished these voluntarily and Mr. Levin copied them. I don't have any questions to their authenticity. They are copies that Mr. Devarney has with him.

THE COURT. You may refer to the copies that you have.

MR. FITZGERALD, Well, will these be made an exhibit?

MR. HAYES. Yes, Mr. Fitzgerald. We'll call that Plaintiff's "1S", Trip Carrier Reports.

THE COURT. Have they been marked?

MR. HAYES. No, your Honor. I will mark them. I have marked them as Plaintiff's "1S".

THE COURT. The Clerk ought to put a sticker on them. The Clerk is making a list of them as she goes along.

MR. FITZGERALD. Would I be able to have these back because I have made notations on them.

THE COURT. I am not sure at the moment why they are being offered. For what purpose are they relevant, Mr. Hayes?

MR. HAYES. Mr. Fitzgerald believes they relate to certain days to which he made reference yesterday and that they clarify his status with respect to those particular days. That is my understanding of the purpose of the testimony, your Honor.

THE COURT. In other words, you are saying for some of the days when he was said to be AWOL, he was actually performing his duties in the Post Office Department? Is that why you are offering these, Mr. Hayes?

MR. HAYES. Yes, that is so, your Honor.

THE COURT. If there are certain days in which Mr. Fitzgerald was actually performing work for the Post Office Department and charged with being AWOL, why doesn't he advise us with reference to those dates, and we understand that this is substantiated by the Trip Carrier

Reports, is that right?

MR. FITZGERALD. Your Honor, that is mostly correct. I wasn't actually working on these days, but I was in a different status than AWOL on these days.

THE COURT. Just refer to the dates.

MR. FITZGERALD. All right, your Honor.

A. Fifth and 6th of June, this trip report shows me as military leave in the remarks section, and there is nothing else that shows I was AWOL;on the 13th of June, it shows I had annual leave here, and this was another day I Was charged with being AWOL. These are both on the first sheet. Those are the specific references that would all be on this one sheet, I guess, at this time.

THE COURT. Why don't we admit "1S", that one sheet.

(Plaintiff's Exhibit "1S" was received in evidence.)

Q (By Mr. Hayes) Now, Mr. Fitzgerald, to return to the dispute which you had with Mr. Devarney regarding whether or not Mr. Devarney could legally hold the position of school director, did this matter ever gain public attention other than the meeting that took place, the meeting that took place--the preschool meeting and school directors meeting?

A. Yes, it did.

Q In what manner did it gain public attention?

A. An article in the BURLINGTON FREE PRESS.

MR. REED. I object to the admission of a newspaper article as hearsay.

MR. HAYES. Your Honor, the introduction of this particular exhibit is not for the purpose of the truth or veracity of the article, but to show such an article did appear in a publication.

THE COURT. There is a claim of malice in this action, and we'll admit it. What number is it?

Q (By Mr. Hayes) Can you identify Plaintiff's Exhibit "31H"? (Handed to the witness)

A. Yes. This is an article that appeared in the BURLINGTON FREE PRESS, and I cut it out of my FREE PRESS.

Q And, the writing at the top is not a part of the exhibit itself?

A. No, it is not.

Q There is a notation on the left hand side. Did you make that notation?

A. No, I did not.

Q Do you know what the notation is?

A. I think it is--I would say it is July, 1970.

Q Do you know what month that appeared in the FREE PRESS?

A. I believe it was July.

Q Do you know approximately when, in July, it appeared?

A. About the first week in July.

MR. HAYES. We ask this be admitted.

THE COURT. Yes, and you may have an exception.

(Plaintiff's Exhibit "31H" was received in evidence.)

Q (By Mr. Hayes) Mr. Fitzgerald, during the course of the investigation that was conducted in one of the adverse actions, it was stated by Mr. Devarney, was it not, that you had written the BURLINGTON FREE PRESS in connection with this dispute. Did you write the BURLINGTON FREE PRESS in connection with this dispute?

A. I did not.

Q You are quoted in the article. Were you interviewed by anyone?

A. Yes, I was. A FREE PRESS reporter called me on the telephone and asked me about the postmaster resigning as school director, and he asked about what had taken place at the meeting, and I told him just what had taken place at the meeting.

Q You, in no way, initiated this publicity?

A. I did not.

Q Did this appear in the BURLINGTON FREE PRESS before or after the first notice of adverse action?

A. Before.

Q Mr. Fitzgerald, to turn to the area of damages, if I may,

I show you an exhibit marked Plaintiff's "1D" and I ask if you can identify that exhibit, and it consists of two pages. (Handed to the witness)

A. Yes. They were two forms which I furnished to my lawyer.

MR. HAYES. We ask these be admitted, your Honor.

MR. REED. No objection.

THE COURT. For what purpose?

MR. HAYES. Your Honor, we will be talking about the loss of wages and these were two forms that go to the income which was received by the plaintiff during the years that he was not employed by the Post Office Department.

THE COURT. What years are they?

MR. HAYES. 1971, '72, '73, '74, your Honor.

THE COURT. Well, all right, we'll admit them as a group. Staple them together.

MR. HAYES. They are admitted?

THE COURT. Defense counsel said they had no objection. Yes, they are admitted.

(Plaintiff's Exhibit "1D" was received in evidence.)

Q (By Mr. Hayes) Now, Mr. Fitzgerald, turning your attention to the matter of damag es, are you alleging that you had a

wage loss as a result of the termination of your employment with the Post Office Department?

A. I am.

Q And, for what period of time are you alleging that there was a wage loss which occurred by reason of your termination of employment with the Post Office Department?

A. From the time that I applied for re-employment until the present date.

Q That is, September 1, 1970?

A. Yes, September 1, 1970 through the 4th of August, 1975.

Q I mis-spoke and you did, too. It is between September 1, 1972 and the present week of 1975?

A. Yes.

Q Now taking first, 1972, the figure that you have calculated as your net wage loss, tell the Court how you arrived at it and what the net wage loss is, and if the Court permits, he has the papers by which he calculated, I believe, the wage loss, or notes with respect to the same, based on his review and I wonder if he might refer to those?

THE COURT. Yes, he may refer to them.

A. For 1972, I took the wages that I would have earned during that period of time if I had returned to the post office, from September 1, 1972 until the end of 1972.

Q (By Mr. Hayes) Now when you say you took the wages, this is the first step in your calculations. You say you took the

wages. What wages are you referring to?

A. I am referring to a wage sheet given to me by Donald Devarney in the Milton Post Office two days ago. I believe it was two days ago.

Q That sheet indicates what you would have made in civilian employment as a rural carrier if you had been serving during that period of time?

A. Yes, it does; to the best of my knowledge it does.

Q Give that figure as to what you would have made in civilian employment as a rural carrier in the Milton Post Office if you had worked from September 1, 1972 to the end of the year.

A. I would have made $3,870.80.

Q But, that is not the figure that you are claiming for damages for that particular period?

A. No, it is not.

Q You made some adjustment in that figure. Tell the Court the procedure you went through in making an adjustment.

A. I added in the number, the pay that I would have received for certain military pay which would be in addition to what I would get in the post office. I added in $571.67 for additional flying training periods; $935.46 for regular drills or unit training assemblies, and thirty-six days for active duty.

THE COURT. What do you mean, you added these

in?

MR. FITZGERALD. I added these in, your Honor, because they would be pay I would have received from the military in addition to my civilian pay at the post office.

THE COURT. Didn't you receive this pay?

MR. FITZGERALD. I did, but later on I subtracted out what I received for military pay. After I came up with a total, I subtracted out what I received for military pay.

THE COURT. Give the figures again.

MR. FITZGERALD. $571.67 is for additional flying training periods; $935.46 is for regular drills or unit training assemblies; thirty-six days of active duty, $1,870.92.

THE COURT. What is the total?

MR. FITZGERALD. I came up with $7,248.93.

THE COURT. What is the total of your military pay?

MR. FITZGERALD. That is the next computation, and I subtracted that out.

THE COURT. I am not sure I understand this. You aren't entitled to military pay and pay from the Post Office Department also.

MR. FITZGERALD. I was, your Honor, on days

off on military leave and annual leave.

THE COURT. Are you telling the Court in each one of these days that you had off during this period, you would be entitled to double pay, so to speak?

MR. FITZGERALD. I would in this case, your Honor.

THE COURT. You added those in. What did you come up with?

MR. FITZGERALD. $7,248.93; subtracted out the military pay I received for that period, which was $4,885.18, leaving a net loss of--net wage loss of $2,363.75.

Q (By Mr. Hayes) So there is no misunderstanding, Mr. Fitzgerald, if you had been employed by the Post Office Department from September 1, 1972 through December 31, 1972, there would have been some days on which you would have received pay from the civilian work as well as the military work, is that correct?

A. That is correct.

Q Had you not been terminated by the Post Office Department?

A. Yes, sir.

Q And, was that the basis on which you calculated what you would have earned during 1972, absent your termination?

A. Yes, it is.

Q Now, would you proceed to 1973 and do the same thing and explain the basis of your calculations?

A. In 1973, I again took what I would have earned at the post office, which would have been $12,889.79. I subtracted leave without pay for twelve days, which is $479.28, leaving a balance of $12,410.51. I added in the active duty I would have received, which would have been $1,299.25. I added in the drills that I would have received, $1,213.80 and drills at another rate which were $3,274.11; twelve active duty days which was figured on one hundred days came to $3,897.75.

THE COURT. That is another figure, an additional figure to active duty and drills?

MR. FITZGERALD. I had the figure, the active duty on two different pay scales because of pay scale changes in the middle of the year, and, therefore, I had the figures for the active duty, $1,299.25 and which was the first figure I gave you, and the last one I gave $3,897.75, the two together add up to the one hundred days and this came to $22,095.42. Out of that I subtracted W-2 Forms that I had for the year 1973, $17,157.78, leaving a net wage loss, $4,937.66.

MR. REED. Your Honor, we object to the testimony concerning the reserve duty as a wage loss. It is not a wage loss. We are talking now about time he took off, independent of the issue here. If we wanted to take that time off, being in the reserves, he would be doing that

regardless of whether he was employed by the Post Office Department or not.

THE COURT. I have considerable difficulty with this method of computation, to be frank with you, and it seems to me his loss would be the amount of time that he would have been paid by the Post Office Department for military drill, but he can't claim in that any of the time that he was working for the military, and he would not have been paid by the Post Office Department.

MR. HAYES. Your Honor; if it please the Court. We believe that there is a net monetary loss that has resulted to this plaintiff by reason of the fact that his employment with the Post Office Department was terminated. We believe that we have shown and can continue to show that his income during each of the contested years consisted of two factors--military income and income from his postal occupation, and we submit to you that it is an injustice to the plaintiff and not in keeping with the law to require him to subtract from the income he would have had in a normal situation, all of the income that he actually did receive during those years when some of it would be simply duplicative. In other words, let's say that he would have earned $21,000 during a given year; $17,000 from his post office occupation and $4,000 from his military. His income was $21,000 for the year. If you

take away his postal employment, and then his net income is $15,000 a year--excuse me, his net income is, say, $17,000 from purely military employment--would you strike that from the record. I became confused with my example. Strike the example. Your Honor, what we are trying to say is he had a net monetary loss as a result of this employment. He was getting the military income anyway.

MR. REED. Exactly.

THE COURT. And that is right, he was getting his pay from the military rather than from the Post Office Department, and he was entitled to be paid for only those days when he was entitled to take time with pay to serve in the military.

MR. HAYES. Your Honor, some of the military income he would have had had he remained with the Post Office Department.

MR. REED. Your Honor, may I be permitted an example. Don't we have a situation where the man has his one job, and he has a part-time job, and that job is not relevant to the loss in the one phrase?

THE COURT. Right. It is as though he had taken another civilian job and you deduct from what his earnings would have been as a post office employee. You take those earnings of what he would have earned and from that you deduct the amount he did earn, and he has a net

loss.

MR. HAYES. If it please the Court. We see a distinction with a difference because if he had taken a new job, that is income he would not have had at the time of his original employment.

THE COURT. Well, I think you have gone about this wrong. I want to know what he would have earned at the Post Office Department for the years in question. Then I want to know how much he, in fact, earned from his military pay and we'll give him credit for the time that he should have been paid by the Post Office Department when he was performing military pay, which, I understand, would be his annual military leave.

MR. HAYES. Your Honor, we'll do that at the Court's request. We would like to take an exception and to note our disagreement with the Court because we feel that a true measure of damages is not being applied when there is a net monetary loss not represented by his Honor's calculations.

THE COURT. We are only interested in the loss he has sustained from the loss of his job at the Post Office Department.

MR. HAYES. We shall proceed as his Honor suggests.

Q (By Mr. Hayes) If you had been employed by the Post Office

Department, how much would you have received in wages for the year 1972, and by that, I mean from September 1, 1972 until the end of the year?

A. From the post office I would have received $3,870.88.

Q That is how much you would have received, and how much did you earn in the military during this period by reason of the termination of your employment?

A. $4,885.18.

Q Do the same thing with respect to 1973. Tell us how much you would have earned from the Post Office Department.

A. $12,889.79.

Q That is the amount you would have earned as a rural carrier?

A. Yes.

Q How much did you earn in the military during that year?

A. $17,157.78.

Q And, would you do the same thing for 1974, Mr. Fitzgerald?

A. In 1974, from the Post Office Department, there would have been approximately--this is an approximate figure--$16,000.

Q That figure was furnished by Mr. Devarney?

A. Yes, it was.

Q Can you tell us how much you earned in the military during that same year, 1974?

A. $17,157.78.

Q I believe we are referring to 1974, are we not?

A. Yes, we are.

Q Well, I turn your attention---

A. Oh, okay; all right. I read the wrong one; $19,738.03.

THE COURT. This is the Air Force pay?

MR. FITZGERALD. Yes, your Honor.

THE COURT. How much?

MR. FITZGERALD. $19,738.03, your Honor.

MR. HAYES. That is correct, your Honor.

THE COURT. Don't we have 1975 to date?

MR. HAYES. Yes, your Honor.

Q (By Mr. Hayes) Give the calculations with respect to 1975 to date.

A. I don't have those on this sheet, but as I recall, it was only $761.32 difference, and that was calculated on a two-week period, I believe, that I was unemployed.

THE COURT. I am not sure I understand that.

MR. HAYES. I will ask him to clarify that, your Honor.

Q (By Mr. Hayes) In other words, you said you have the figure of your military pay up to now, do you, for 1975?

A. No, I do not. I didn't figure by the days for 1975.

Q Well, what his Honor is trying to get at is the difference between what you would have received in the post office and what you actually received in the way of military pay. Do you have those two figures?

A. I can't give you those figures as such, because they were not figured up. I only figured on difference of a period of two weeks, and so all I can say is that in the Air Force I have earned more money this year than I would have if I had worked in the post office. I will say that, except for the two-week period.

Q (By Mr. Hayes) And, the difference is how much?

A. $761.32.

MR. REED. Could he clarify that? Is that for the entire year or the two-week period?

MR. FITZGERALD. This is from the first of January, 1975 to August.

THE COURT. In other words, you have earned $761.32 more by being in the Air Force to date than if you had been working for the Post Office Department?

MR. FITZGERALD. No, your Honor. I have earned more than that. I have probably earned three thousand, maybe three or four thousand dollars more this year in the Air Force than I would have earned at the post office.

MR. HAYES. May counsel approach the bench for a minute, your Honor?

THE COURT. Certainly. Let's take a short recess and I will see counsel in chambers.

(Court recessed from 10:30 - 11:05 a.m.)

(Discussion in chambers off the record.)

THE COURT. All right, Mr. Hayes, where are we now?

MR. HAYES. If it please the Court. It has been agreed by counsel that we probably can best clarify some of the matters suggested and discussed in chambers, your Honor, if I call Mr. Devarney for the limited purpose of explaining the daily rate and the annual leave situation for the benefit of the Court and all concerned.

THE COURT. All right, you may do so.

DONALD R. DEVARNEY, Sworn

CROSS EXAMINATION

Q (By Mr. Hayes) Mr. Devarney, assuming that Mr. Fitzgerald had been employed by the Post Office Department from September 1, 1972 until the present time, how many days of annual leave would he have been entitled to each year understanding that there would be a proratio for 1972 and for 1975 because we are talking about a short period in 1972 and a shorter period in 1975.

A. On a full year basis it would be 26 days annual leave.

Q And, how would it have worked, sir, for 1972?

A. Well, it would have been prorated from the time of return to work at a 26 day yearly basis.

Q So if he had been reappointed on September 1st, he would have had September, October, November and December you could base your calculations on. That would be a third of

a year, is that correct, sir?

A. Generally.

Q Right. So, what would the approximate number of days of annual leave be for that year?

A. I am not too clear on that point, because your annual leave is based on the number of years of service and whether it goes into effect immediately upon the date. I believe it does. So, we are talking September, October, November and December. You are taking a third of a year of 26 days, which would be 8-2/3 days approximately.

Q Now, is it correct, sir, that when you take one week annual leave; that is, five days count--are there circumstances under which you are given bonus days of Saturdays on either end?

A. I believe the regulation pertaining to annual leave is worded in this manner--in an annual leave period of five days or more, a Saturday at the beginning of, or in the middle of, or at the end of his vacation period is not counted against the annual leave charge.

Q Now, was this a six-day route, sir, in 1972?

A. Yes, it was.

Q So in addition to the 8-2/3 days Mr. Fitzgerald could if he took, say, if he started on a Saturday and took 8-2/3 days in a row, he would get bonus days of two Saturdays, is that correct?

A. Right.

Q So, 8-2/3 really for pay purposes means 10-2/3 days, sir. Is that correct, sir, for 1972?

A. If the period of annual leave was taken as you indicated, yes.

Q But, if it was taken consecutively, it would have to include one Saturday?

A. Right.

Q For 1973, would the Saturday rule still apply in the case of this particular route?

A. For the year 1973?

Q Yes, sir.

A. I would apply until November, 1973.

Q Until November of 1973?

A. Right.

Q So provided he had taken his leave before November of 1973, he could have gotten a Saturday on the end of each five days, had he taken his leave that way?

A. Right.

Q So, it would be seven days pay for five days leave, is that correct? Let me clarify it again. Assuming that he had taken the 26 days before November of 1973, he would have gotten every time he took five days leave, if he took the Monday through Friday, he would have gotten a Saturday on each end, is that correct?

A. That is correct.

Q Now, turning your attention to the period from November----

THE COURT. I am not sure what that means, Mr. Hayes.

MR. HAYES. What I am trying to get at, your Honor, is when you get five days leave that counts against your 26, you can actually get 7 days pay. So when we are talking in money terms, we are talking about 7 days of money and not the five.

MR. DEVARNEY. If the five days are taken according to the stipulation I mentioned previously where a Saturday at the beginning of, in the middle of, or at the end of vacation period, those would be free Saturdays.

Q (By Mr. Hayes) But at the very minimum, no matter how you took it, you would get the five consecutive days, one Saturday?

A. Right.

THE COURT. So are you saying in 1973 he could have up to thirty days?

MR. DEVARNEY. As I understand it, your Honor, in 1973 Mr. Fitzgerald could have had--he calculates 37 days pay for 26 days annual leave--excuse me, 36; correct, 36 days. That would mean there would have to be a gap in the time that he took it; like if he took his 20 days leave in a row, he would not get that amount of days, but we'll

put on testimony to show what his pattern was, your Honor, later.

THE COURT. All right.

Q (By Mr. Hayes) Now for purposes of calculation, sir, can you tell us for the year 1972, and again we are addressing ourselves to the period September 1, 1975 to the end, how much should each day's annual leave be calculated, and that would include Saturdays. So, how much would he be paid for those days?

A. I couldn't give you the daily rate without a calculator to run it through.

Q I thought there was an agreement on those figures encircled; perhaps we can tell the Court the stipulation.

MR. HAYES. Your Honor, we have a stipulation of counsel--I didn't know Mr. Devarney was not party to this--and we can give the Court right now the sipulated daily rate for that annual leave.

THE COURT. Stipulated daily rate of pay, in other words?

MR. HAYES. That is right, your Honor.

THE COURT. All right.

MR. HAYES. That would be for 1972; it would be $39.94; for 1973, the figure would be $45.33; for 1974, $53.12 and for 1975, it would be $54.38.. Is that as counsel for the defense understands it, too?

MR. REED. Yes, your Honor. Would you explain to the Court about that, Mr. Levin?

THE COURT. If you are satisfied, we'll accept the stipulation.

MR. REED. Right.

THE COURT. We'll accept the stipulation that cousnel have agreed upon.

Q (By Mr. Hayes) I do have two or three further questions for you, Mr. Devarney, on this. You told us this route was a six-day work week until November of what year, sir?

A. 1973.

Q From 1973 until the present time, can you tell us how many days there were to the route?

A. From November of 1973 until this point in time, there is an option available to the carrier which would make it either a five-day work week, or a 5-1/2 day work week. This is regulated by a Government regulation stating that no employee will work a steady schedule more than a 48 hour work week.

Q Now assuming, sir, that an employee took the option of working five days one week, six days the next week, how would you calculate the annual leave situation going into the Saturday problem as we have discussed before? Can you tell us how that would work in that situation?

A. It depends on the length of the vacation pe[illegible]d and

when it would start. There would be only 26 of those Saturdays which would come under the free annual leave status. The other 26 would be called a mandatory jay-day off.

Q So the most you could get in taking one week at a time would be six days pay for five days leave, is that the way it would work under the new system?

A. Right.

MR. HAYES. I have no further questions on this point.

MR. REED. There is no cross examination, your Honor.

MR. HAYES. Thank you very much, Mr. Devarney.

(Mr. Devarney returned to his seat at defense table.)

JOHN W. FITZGERALD resumed the stand for continuation of DIRECT EXAMINATION

Q (By Mr Hayes) Mr. Fitzgerald, you just heard the testimony of Mr. Devarney. Now would you address yourself to the year 1972 and tell us how many days annual leave you would have had and how many days pay in connection with that annual leave?

A. I would have had approximately 8-2/3 days annual leave for the rest of 1972, and I would have had ten days of Saturdays that could be included.

Q That is at the rate pointed out by Mr. Devarney?

A. Yes, it is.

Q Which counsel pointed out, rather?

A. Yes.

Q Now, taking 1973, sir, you agree with counsel that $45.33 is what you would have been paid a day on annual leave, is that correct?

A. They gave me the figures, and I assume they are right. I don't have the access to them. All right, yes, sir.

Q Now, how many days of annual leave would you have gotten in 1973 had you been employed, and how many days pay would you have gotten?

A. I would have got 26 days annual leave, and I would have taken it such that I would have had Saturdays on each end and would have had 36 days leave from work.

Q Now during the time that you were with the Post Office Department from 1959 until 1975, how did you take your annual leave? Did you take it in such a manner as to get the Saturdays on each end, or did you take it in a different fashion?

A. I took it so as to receive the Saturdays on each end, except in exceptional cases where it was not possible. I usually planned to take five days annual leave starting on a Saturday and ending on a Saturday.

Q And, only in exceptional cases did you vary from that?

A. Yes.

Q Now turning your attention to 1974, how many days annual leave would you have been entitled to?

A. Twenty-six days.

Q And, you have heard Mr. Devarney's explanation of the change in statutes. How many days of annual leave would that have resulted in, sir?

A. That would be five weeks; it would be about 31 days, I believe.

Q Thirty-one days pay when you took the 26 days leave?

A. Yes. I haven't figured or worked under that schedule, but I understand that is what it would be.

Q As to 1975, sir, up to now, you would have earned a pro-rata share. It would be a little over 7/12 because we are into the first week in August, but what you would get is that fraction of 26 plus whatever Saturdays could be attached to it, is that correct?

A. Yes, that is correct.

Q And, that can be calculated for the Court?

THE COURT. Let's calculate it.

Q (By Mr. Hayes) Dividing 12 months into 26, Mr. Fitzgerald, we would come up with a figure of 2.16 days annual leave per month of service. Would you concur in that calculation?

A. That sounds reasonable.

Q And, since you had the first seven months involved in this

year through July, you would be talking about a figure, would you not, of approximately 15.12 days through the end of July of this year?

A. That is correct.

Q And, since we have now finished approximately one-fourth of the month of August, we are talking about one-fourth of 2.16 days for the month, or a little over a one-half day; assuming it is one-half day, we are talking about 15.62 days for the month, are we not, of annual leave?

A. Yes, sir.

Q I should say, for the year to date?

A. Yes, sir.

Q So your wage loss, if it were calculated on a basis of number of days you are entitled to, would be 15.12 times the wage rate of $54.38 a day that you would have received as a rural carrier?

A. Yes, on the annual leave.

MR. REED. Your Honor, I think one point needs clarification. Does the Court have this copy of the computations?

THE COURT. We do.

MR. REED. It has been stipulated, and I will present it to the Court at this time; there are dates which run along.

THE COURT. I said I have a copy.

MR. REED. Oh, I am sorry. There are dates which run along the left hand margin and it is my understanding these dates indicate as they regards the files, of the time period after that date. In other words, there were changes in it. As I understand it, there were changes in the route, and, as such, the hours became different, and the pay scale was different. So, as regards, let's say, 1974, the correct amount would be $45.33 from November of 1973 to November of 1974.

MR. HAYES. Counsel stands corrected, your Honor.

MR. REED. It is something I just noticed myself.

MR. HAYES. I am glad that was brought to my attention. The 15.62 days of annual leave, it would depend upon when they were taken; in 1975, as counsel has pointed out, and if they were taken prior to May 10th, they would be calculated at $53.12; if taken after May 10th, it would be calculated at $54.38. We appreciate counsel bringing that to our attention.

Q (By Mr. Hayes) Now, the 15.12 days of annual leave to which you would have been entitled in 1975 had you been with the department to date, how many days of pay would youe have gotten for those fifteen days, based on the testimony of Mr. Devarney?

A. If I understand, eighteen days pay, as I understand it.

Q Now turning your attention, Mr. Fitzgerald, to the question of military leave, as I understand, that is when you were employed by the Post Office Department were paid double pay on any day you were on military leave, is that correct?

A. That is correct.

Q You were paid both by the Post Office Department and the military?

A. That is correct.

Q Now, I wonder if you could inform his Honor how we would arrive at what you would have received for military pay during each of those periods we are talking about, and start with 1972, September, 1972, assuming you had been.

A. In 1972, I would have been eligible for fifteen days military leave a year, because it is on the calendar basis and not prorated.

Q So you would have gotten fifteen days pay in 1972 and it would have been at the same rate, sir, by the Post Office Department that we have heard earlier, $39.94?

A. Yes, that is the rate. I don't have the paper.

Q That is the stipulated rate?

THE COURT. Are you saying you had no military leave in 1972 at all up to the time that you---

MR. FITZGERALD. 1972, your Honor, is when I

applied for re-employment?

THE COURT. All right.

MR. REED. Ag ain, I point out it is not my intention to be picky, but we are going to have trouble with the figures here because it would be if he took it after November of 1973, as I understand it, Mr. Hayes. It appears we are going to have two figures operating in each calendar year because of the way the change is. It only amounts to a couple dollars; some of it is substantial. Just so the Court has it in mind.

THE COURT. I am not sure I am following you one hundred per cent, Mr. Reed.

MR. REED. Your Honor, it is my understanding due to various factors, cost of living increases, change in route, what have you, that the pay rate varied; increased as it appears from the progression from the 11th of November 1969 to May of 1975 which this chart, in effect, covers the effect of the pay rate. Let's take the second line of figures from November of 1970 to November of 1971; the pay rate was $29.47; then from November, 1971 to November of 1972, the pay rate was $34.50, as I understand it. In other words---

THE COURT. Which rate the employee was paid at would be dependent on when he took his annual leave?

MR. REED. Yes, your Honor.

THE COURT. As far as 1972, '73 and '74 are concerned, we don't know when that would have been.

MR. REED. Yes, your Honor.

THE COURT. Anything counsel can get together and agree on?

MR. HAYES. May I have a moment, your Honor.

MR. REED. If Mr. Hayes is agreeable not to have this come out in oral testimony, we can get together probably during the noon hour.

THE COURT. It would be easier if counsel sat down and stipulated for the benefit of the Court.

MR. HAYES. Your Honor, I will try to negotiate it during the noon hour. I made an offer to dispose of it. It SEEMs the easiest way is take it midpoint between the two figures, but it is unsuitable.

THE COURT. We'll let counsel discuss it during the noon hour and see if they can't come up with something.

MR. REED. We will, your Honor.

MR. HAYES. May I have the last question of the witness read back?

(The reporter read the last question.)

Q (By Mr. Hayes) So you would have had fifteen days and we can take up after the lunch hour at what rate you would have been paid. As to 1973, how many days military leave

would you have had, sir, while if you had been employed by the Post Office Department?

A. Fifteen.

Q And, you would have been paid at either one of the two rates that are discussed in this?

A. Yes.

MR. HAYES. Can we make that an exhibit, your Honor, that is before you?

MR. REED. No objection, your Honor. As a matter of fact, since Mr. Devarney testified to the periods and rate which was, to his knowledge, which was on this piece of paper, let's make this an exhibit and let it speak for itself.

THE COURT. All right. You can mark this an exhibit, Madam Clerk.

Q (By Mr. Hayes) There are two rates, depending on when you took your leave during that particular period, is that right?

A. Yes.

Q Turning your attention to 1973, had you been employed by the Post Office Department, you would have been paid military leave in 1973?

A. Yes.

Q That would be how many days?

A. Fifteen days.

Q That would have been at either of the rates depending on

when you took it in 1973?

A. Yes, sir.

Q And, again we are referring to either rate set forth in "1U"?

A. Yes.

Q And, in 1974, sir, you would have had fifteen days of military pay?

A. Yes, I would.

Q And, you would have been paid by the Post Office Department?

A. Yes, I would.

Q And, you would have been paid at either one of the two rates set forth in Plaintiff's "1U" depending on when you took the leave?

A. Yes.

Q And, as to this year, had you been employed by the Post Office Department from January 1, 1975 up to the present time, how many days of military leave would you have been entitled to?

A. I would have been entilted to have fifteen days.

Q How many days would you have taken up to now?

A. It is hard to say. I really don't know.

Q So the best estimate is that they would be prorated?

A. Prorated would be fair, yes.

Q Is that realistic in terms of your past activity?

A. Yes.

Q And, that is probably what would have happened?

A. Yes, sir.

Q And again, that would be at either one of two pay rates set forth in Plaintiff's Exhibit "1U"?

A. Yes, it would.

Q Assuming you were allowed by this Court pay from the Post Office Department each year for the appropriate amount of annual leave days and the bonus days that go with it, plus the military leave, is it your testimony that there are certain days not taken into account in that that should betaken into account?

A. Yes, there is.

Q Would you tell the Court what those days are and explain why you feel they should be taken into account?

A. There are holidays that should be taken into account and Sundays that should be taken into account; there are 52 Sundays and 9 holidays a year. In the past, I have worked military duty, performed military duty on these days, and I would have continued to do the same.

Q So how many additional days are you talking about?

A. I am talking about approximately one hundred days of active duty per year that I would have performed, and this would have been a combination of military leave,and annual leave, Sundays and holidays.

MR. REED. Your Honor, I renew the objection

to the military leave. This is the time he would have been doing it any way and not being paid by the post office on Sundays.

THE COURT. Let me get this down. One hundred days of active duty; a combination of military, annual, Sundays and holidays?

MR. FITZGERALD. Yes, your Honor.

THE COURT. We'll let the testimony stand, and we'll determine what weight to give it.

Q (By Mr. Hayes) Does that include the drills?

A. It does not, no. This is one hundred days of active duty for training.

Q Would there be drills also?

A. There would.

Q How many drills would there be?

A. There would be four drills, 48 unit training assemblies and 36 additional flying training periods.

Q That would be, each calendar year?

A. Yes, sir.

Q And, for 1972 and 1975, would it be the fairest and most reasonable thing to prorate those drills and those flying periods over that period of time, or how would you calculate it for 1972 and 1975?

A. I calculated 1972 by what I actually did and assumed that I would have done the same if I had been working for

the post office.

Q So as to the flying periods, were you referring to both drills and flying periods?

A. Both drills and flying periods.

Q Now, can you tell the Court how your situation has changed if it has changed during the periods September 1, 1972 until the present time? Are you still performing your duty in Maine?

A. I am not. I am now performing my duty in Burlington, Vermont, and I do not have the travel problem, your Honor, that I had originally, in that I had to travel considerable distances. It is now possible in Burlington for me to make my unit training assemblies and additional flying training periods at night, or on Sundays, and this does not conflict with the work schedule, as a rule. There might be five days a year that would conflict with a work schedule.

Q So, turning your attention, sir, to the period from February, 1974 until the present, is it your contention that without taking any days off from the Post Office Department, you could complete your 48 drills and 36 additional flying periods?

A. Yes, other than if there was a certain date they said they wanted us there on a Saturday, it may be a conflict.

Q Is that an exceptional circumstance?

A. That is an exceptional circumstance.

Q Now, as to active duty days during the periods September 1, 1972 until August of 1975, what would you have been taking in the way of active duty days? Were they calculated in the figures you previously gave the Court?

A. Yes, they were.

Q Now, can you tell us, assuming that his Honor allowed you damages for those days, can you, by reference to any document, or by recollection, tell us at what military rate the pay should be calculated?

A. I don't have those figures with me. I know this also changes every year the same as the wage salary for the Postal Department. So, therefore, it would have to be computed at different rates during the year. It would be approximately somewhere around $50 a day until this year; say, between fifty and sixty dollars a day, and at this time it would change, and I can't give you a figure on that right now.

Q Could you, after the lunch hour?

A. I would.

MR. REED. I object to this as being military pay and being irrelevant to his actual loss in this matter. That is an independent activity on his part.

THE COURT. To be quite frank with you, I am confused at the moment. We'll let you compute it during the

noon hour, and I am having difficulty with your presentation, Mr. Hayes. Maybe we should be putting it on the board, or something.

Q (By Mr. Hayes) Turning your attention to the period of September 1, 1972 to 12/31/72, you have already testified, have you not, as to what you would have gotten in the way of pay from the Post Office Department for annual leave and for military leave?

A. Yes.

Q So, you have just been going through some calculations, have you not, designed to show how much military pay you would have received while working for the Post Office Department during that period of time? Is that what you are getting at?

A. Yes.

Q Would you break that down for me so I can put this on the board as to category and number of days?

A. To the best of my knowledge it would be $51.97 for that period of time there.

Q Is that the daily rate, sir?

A. Yes.

Q All right. $51.97 a day is how much you would be paid per day. Now give me, if you will, break it down by category. How many days of each kind of duty?

MR. HAYES. Is that what you are looking for,

your Honor?

THE COURT. I don't know. What do you hope to establish by this?

MR. HAYES. We are hoping to establish, your Honor, that this is pay he would have gotten from the military without interfering with his postal duties had he been allowed to continue in the postal service.

MR. REED. Your Honor, that is highly speculative, and there is testimony by the plaintiff himself that of what did, in fact, take place.

THE COURT. Didn't he, in fact, get the pay?

MR. HAYES. Yes, your Honor. He was paid during that period of time, but we were trying to establish for the record what the net monetary loss was and felt it was composed of; this was a part of the factor, the days he would have been paid any way was income he would have had while employed in the post office, and we don't think he should take the bare figure of what he got between September, 1972 and the end of 1972 and simply subtract that from the postal pay.

MR. REED. Your Honor, it is a fair analogy he had a part-time job which isn't pertinent to this one. If he kept the part-time job, or didn't keep it, that is irrelevant; that is his business and not relevant, and the fact he is with the post office and the fact he is now

drilling in Burlington has surely nothing to do with this computation. If he chose to take another income and earned money on that job, that has no bearing on the post office income which is really what we are talking about, and he did this--the Court points out he did get military pay of approximately $17,000 a year which is the choice he had made. He could have taken another job instead with the reserves and gotten that pay. There is no indication he wouldn't have gotten that pay with or without his post office job.

MR. FITZGERALD. May I say something, your Honor?

THE COURT. Just a minute.

MR. HAYES. If it please the Court?

THE COURT. Yes.

MR. HAYES. What we want to establish here is that--and in particular with respect to the period 1974 to the present, Mr. Fitzgerald is right in the area of where his training takes place. There would be no reason to take his drills during the week when he has nights and weekends available, and particularly with respect to that period, we can say with vigor and force that it would be reasonable to assume he would have done so, and as to the early period, we can show what his pattern of practice was over the years while he was a post office employee long

before the dispute occurred.

THE COURT. Hasn't Mr. Fitzgerald almost virtually been on active duty continuously since? Since September of 1972?

MR. HAYES. Almost full time is the best way I can characterize it. There have been gaps in it, in the service.

MR. REED. Your Honor, what we are doing, it seems, is giving Mr. Fitzgerald the benefit of a full time job, plus computing a full time job he wasn't performing.

THE COURT. There is no reason to think that whatever he wants to earn in addition to his regular job he is entitled to earn.

MR. HAYES. Your Honor, may I try an example on the board? Let's say in 1973, since it was a full year's absence, let's say he was working for the Post Office Department at $15,000 and getting $6,000 from his outside military pursuits. That would be a total of $21,000 for the year. Now if he is fired from the post office during this period, doesn't have a job, and he earns $17,000 total income, counsel for the defense would have you believe that he has suffered no monetary loss because you subtract seventeen from fifteen where his annual income has declined from $21,000 to $17,000 and we say there is a net monetary loss.

MR. REED. The loss has to be related to some

concept of liability and for the defendant to be liable for the choice an individual makes about a part-time job totally independent of his post office position is unfair. If he chooses to be employed in any manner he chose to be employed outside the normal work period, that is certainly nothing that the defendant had any control over. His being removed from the employment rolls of the post office had nothing to do with his reserve and vice versa. It may have had a causual effect, but not as to monetary damag es.

THE COURT. The problem I see, Mr. Hayes, in that $17,000 is the $6,000 that he would have earned from the Post Office Department.

MR. HAYES. In the $17,000, there is $6,000 he would have earned from the Post Office Department.

THE COURT. That he would haee earned had he still been working for the Post Office Department, isn't that correct? The same hours, or the same amount of pay is already in there?

MR. HAYES. Well, your Honor, what has happened is that the part-time aspects is being subtracted; his part-time service was in the military, let's say, $6,000 and what you are saying by your theory, as I understand it, is that that should be regarded as a part of the $17,000 that should be subtracted from the $15,000. In other words; the man made $4,000 less had he been employed by the Post Office Department.

His gross income would have been $21,000. He wasn't employed by the Post Office Department. That changed his situation with the military; his income for the year was $17,000. In that example it seems there is a net monetary loss to the individual in terms of what he has available to him. I wonder, if off the record, my client could attempt to explain his theory of this.

MR. REED. Why should it be off the record?

THE COURT. I don't see why it should be either, but all right, we'll let you proceed and we'll let the Government cross examine on this.

Q (By Mr. Hayes) Mr. Fitzgerald, can you bring this more sharply to focus, the theory you are advancing here for this?

A. I think that I can. May I go ahead?

Q Please proceed.

A. From September 1, 1972 I was employed one-half of the time. I worked for thirty days on active duty and was taken off active duty for a thirty-day period, and then I would go back on for thirty days again. Some times, this would be forty-five days, but I would be off for forty-five days, so I was actually employed half of the time, but when I was not employed, I did do my regular drills and additional flying training periods that I ordinarily would have done at the post office, and I did receive wages for that

which were added into the W-2 Forms for the total amount.

THE COURT. But, you were working, if the right word is "full time" only fifty per cent of the time, is that right?

MR. FITZGERALD. Yes, sir, that would be correct, your Honor.

THE COURT. Is that the same through each year?

MR. FITZGERALD. No, your Honor.

THE COURT. What I am getting at is that you should not recover pay for the military when you were working full time for the military apart from your regular duties, regular training duties, and so forth, and drills, you shouldn't also recover from the Post Office Department.

MR. FITZGERALD. Your Honor, from the 2nd of November, 1970 I was employed full time until approximately the 17th of August, 1972.

THE COURT. And, you made no claim for that period?

MR. FITZGERALD. That is correct, your Honor.

THE COURT. All right.

A. Starting from the time just previous to my applying for re-employment, I was working half time. I had a half time job. I worked thirty days; thirty days I did not work, or equal increments.

THE COURT. Are you able to give me, by years, the number of days you worked for the Air Force on a full time basis, or on a regular basis as opposed to drills and active training duty and the like? I am not sure I have these various categories very well down.

MR. FITZGERALD. Yes, your Honor. Now, over what period of time are you speaking?

THE COURT. Through the whole period of time down to the present date. You say you worked thirty days and off thirty days, is that right?

MR. FITZGERALD. Yes, your Honor. I need another piece of paper, other than the one I have, but I can furnish you that information off from the records.

THE COURT. Those are records you have here?

MR. FITZGERALD. I can get them. I don't know if they are in this room at the present time.

THE COURT. I would like that information also, and it being noon, maybe counsel can get together with their clients and work these various figures out. We'll take a recess until 1:30.

(Court recessed from 12:00 - 2:20 p.m.)

THE COURT. Mr. Fitzgerald, will you resume the stand.

JOHN W. FITZGERALD resumed the stand for continued DIRECT EXAMINATION.

THE COURT. With the consent of counsel, I want to ask you some questions which will clarify some items for me, and then after I have asked you some questions, we are going to let your counsel continue with his interrogation.

EXAMINATION BY THE COURT

Q I want to start with the year 1972 and from September 1st of 1972 to December 31, 1972, how much pay would you have earned from the Post Office Department? Can you advise me with reference to that? Do you have that figure?

A. I gave that figure before. I don't know if I still have that paper with me.

Q Is that $3,870.88?

A. Yes, your Honor, $3,870.88.

Q Then during that period of time, it is your testimony that you would have been entitled to annual leave in the amount of 10-2/3 days, is that right?

A. Yes, your Honor.

Q Now, during that period of time, you would have also been entitled to some military leave, if that is the correct term, is that right?

A. Yes, your Honor.

Q How many days military leave would you be entitled to?

A. Fifteen days, your Honor.

Q Well, that would be fifteen for the year, but we are not

talking about a whole year. We are talking approximately a third of the year.

A. Yes, but they never prorated it. They just said fifteen days leave a calendar year.

Q All right, fifteen days. Do we know the rate of pay per day of your post office pay?

A. We have that on the sheet made an exhibit. I don't believe I even have that sheet any more at all.

THE COURT. Let me see if we can come up with this.

MR. HAYES. If it please the Court.

THE COURT. I have one in front of me, Plaintiff's "1U".

MR. HAYES. May I put this in front of Mr. Fitzgerald?

THE COURT. Yes.

Q (By the Court) $39.94, is that correct?

A. Yes, your Honor.

Q THE COURT. Now, Mr. Reed, I want to ask you a question at this point. Do you agree with those figures of $39.94?

MR. REED. Up to, for the period between from November of 1970--no, November of 1971. Yes, your Honor, I agree, 1971 to 1972, pardon me. $39.94, I agree that pay commenced on November, 1972, so that for the most pur-

poses, the calendar of ten months during the period from November of 1971 to 1972 would be $34.50.

THE COURT. We are interested in from September to November would be $34.50?

MR. REED. Yes, your Honor.

THE COURT. And, November and December would be $39.94?

MR. REED. Yes, your Honor.

Q (By The Court) Now, Mr. Fitzgerald, in 1973 your post office pay was $12,889.79, is that right?

A. Yes, your Honor.

Q For that year, you say you were entitled to annual leave with pay totalling thirty-six days, is that right?

A. Yes, your Honor.

Q Military leave would be fifteen days?

A. Yes, your Honor.

Q And, from January to November your rate of pay would be $39.94, is that right?

A. Yes, your Honor.

Q And, November and December of that year, your rate of pay would be $45.33, is that right?

A. Yes, your Honor.

THE COURT. Mr. Reed, do you agree with that?

MR. REED. We do, your Honor.

Q (By The Court) In 1974, your post office pay--let me ask

a question relative to 1974. Does that stand in the same category as 1972 and 1973?

A. Yes, your Honor.

Q It does? All right, in 1974, what was your post office pay? I have an approximation of $16,000, or what would your post office pay have been do you know?

A. I have $14,593.37.

Q $14,594.37?

A. Yes, sir.

Q That is the post office pay you would have received in 1974. Your annual leave in 1974 would have been thirty-one days with pay?

A. Yes, your Honor.

Q You would be entitled to fifteen days of military leave?

A. Yes, your Honor.

Q And, your rate of pay from January 1st to October 31st would be $45.33, and your pay for November and December would be $53.12, is that right?

A. The pay, yes. Yes, your Honor.

THE COURT. Do you agree with that, Mr. Reed?

MR. REED. Yes, your Honor.

Q (By The Court) In 1975, can you advise me as to how much pay you would have received from the first of the year to date?

A. I don't have that figure here. It wasn't in these

figures I had figured on. It was done on a separate piece of paper.

Q Do you have that some place?

A. Yes, I do.

Q And, you would be able to advise the Court with reference to that?

A. Yes, I would.

Q All right. Then annual leave for this year to date would be fifteen days?

A. Yes, your Honor.

Q Well, eighteen days pay?

A. Eighteen days pay, yes.

Q Fifteen days military?

A. Yes, your Honor.

Q And, the rate of pay would be from the first of the year to May 10th, would be $53.12?

A. Yes, your Honor.

Q And, from May 10th down to the present, rate of pay would be $54.38?

A. Yes, your Honor.

THE COURT. Do you agree with that, Mr. Reed?

MR. REED. Yes, your Honor.

Q (By The Court) Now, that clarifies that for me. Now I do want to ask you some further questions. During the past three years, have you received different pay for different

kinds of duty, or is it always the same pay?

A. The pay is basically the same. It should be the same except the wage scale changes from one period of time to another either with a promotion or cost of living increase.

Q In other words, it is fair to say that you have whatever type of duty you have performed, you have been paid at the then current pay scale you are entitled to?

A. Yes, your Honor.

Q So, you haven't received different types of pay for different types of duty; different amounts of pay for different types of duty?

A. No, your Honor.

Q We are talking about the Air Force, of course?

A. Yes, your Honor.

Q Then can you advise me how the rates of pay may have changed between 1972 and 1975 as far as your Air Force is concerned?

A. In 1972, your Honor, it would be $51.99 a day; in 1973, starting the first of January, it would be $54.96 a day; 1974, 1st of January, $59.39; 1975, in 1975 it changed the 22nd of February to $65.31.

Q It chang ed February 22, 1975 to what?

A. To $65.31. Your Honor, I figured those out during the noon hour. I am sure they are within a few cents. I may have made a slight mistake, but I don't think so, your Honor.

THE COURT. All right, Mr. Hayes, you may proceed now.

DIRECT EXAMINATION CONTINUED

Q (By Mr. Hayes) Mr. Fitzgerald, during the lunch hour, you made some recapitulations, did you not, of the various types of duty you have had since September 1, 1972 and when you had it?

A. Yes, I did.

Q And, you have already given his Honor the applicable pay rates. There is no need to repeat that, so will you start from September 1st of 1972 and would you read off which dates you were on which type of duty?

A. I was on active duty from September 14, 1972 to October 15th of 1972.

Q That is full time duty?

A. Yes, and I was on active duty from the 16th of November to the 15th of December. That was the type of duty that I had been performing before. Now, this other I will read will be what I have performed in between when I didn't have any other employment. I did these drills on September 8, 9, 10, 11, 12, 13; I performed additional flying training periods and I also performed unit training assemblies 8, 9, 10, 11 and 12th of September; I performed annual training on the 16th and the 17th of October; 18, 19, 20 and 21st of October; I performed unit training assemblies 24, 26,

27, 28, 30 and 31st of October; I performed additional flying training periods 26, 27, 28, 30 and 21st of October; I performed annual training November 7, 8 and 9th; unit training assemblies in November on the 4th, 5th, 10th, 13th; in December, I performed annual training 16, 17, 18, 19 and 20th, and in November I performed additional flying training periods 1, 4, and 10th. This would complete 1972. In 1973, I performed active duty from the 22nd of January to the 15th of March. I performed annual training on January 2, 3, 4, 5, 10 and 11th. In January, I performed unit training assemblies 6, 7, 8, 9, 12, 13, 15,16, 17, 18; I performed additional flying training periods 8, 9, 12, 13, 15, 16, 18, 19, and annual training in March 16, 17, 18, 30th; additional flying training periods in March 23, 27, 28, 29; annual training April 23, 24--excuse me-- April 2, 3, 4, 5; unit training assemblies April 6, 7, 12, 24, 25; additional flying training periods 6, 7, 12, 24, 25, 26 and 30th. In May, I performed active duty 16th of May through the 16th of June. In fact, include in that at the end of June 16th--of May until the 30th of June, I performed unit training assemblies May 2, 3 and 6th; unit training assembly on June 6th, and I have additional flying training periods the 8th of June and I also had UTA the 8th of June. So, UTA are the 6th and 8th of June; additional flying training periods would be 8th; annual training the

4th and 5th of June; unit training assemblies in July 25th, and I performed additional flying training periods the same day, the 25th. Unit training assembly on the 27th of July; August 2nd, I performed UTA; annual training, 13th of August; unit training assembly August 8, 9, 11 and 12th; additional flying training periods August 6, 8--strike the 6th--make it the 8th, 9th and 12th; I performed active duty 26th of August to the 26th of September; I performed annual training 31st of July, 11th of August and the 1st of October; unit training assemblies 13th of August and I had also the 20th of August; additional flying training period the 13thof August; annual training, 16, 17--14, 16, 17 and 18th of August; additional flying training periods 20th and 21st of August. November, I performed AFTP the 27th and 28th; annual training 4th and 5th of October; unit training assemblies 2, 3, 6 and 7th of October; additional flying training periods also the 2, 3, 6, 11 and 12th of October; unit training assembly--make it annual training now 9th, 10th and 13th of October.

THE COURT. Are these the ones you are going to submit in documentary form?

MR. HAYES. Yes, he will submit it in table form, your Honor.

THE COURT. Any reason to go through each one of these in this manner?

MR. HAYES. It is not necessary, your Honor, if it is agreeable to counsel they will be admissible.

MR. REED. We have no objection, your Honor.

THE COURT. All right, submit them in table form.

MR. HAYES. We'll do that tomorrow morning, your Honor.

Q (By Mr. Hayes) Mr. Fitzgerald, turning your attention to the matter of sick leave, did you have any sick leave accumulated to your credit when your services with the post office were terminated?

A. Yes, I did.

THE COURT. And, can you refer to notes, with permission of the Court, and tell us what the sick leave accumulation was?

MR. FITZGERALD. Yes, I can.

MR. HAYES. You have no objection to him referring to his notes, your Honor?

THE COURT. No.

Q (By Mr. Hayes) Can you tell the Court what that sick leave accumulation was?

A. Nineteen days.

Q And, what would that be worth in terms of pay, sir?

A. Approximately five hundred sixty dollars.

Q And, have you lost that sick leave protection as a result

of the termination of your employment?

A. I have.

Q In 1973, how many days of sick leave would you have earned had you been fully employed by the Post Office Department?

A. Three and a half.

Q You are referring from September 1, 1972 to December 31st?

A. Three and a half days, yes.

Q And, that would be of what value?

A. Approximately one hundred dollars; $103.50.

Q For 1973, would you have accumulated days of sick leave had you been working for the Post Office Department?

A. Yes, I would have.

Q How many days would you have accumulated?

A. Thirteen days.

Q What would they be valued?

A. $530.60.

Q In 1974, had you been employed by the Post Office Department, would you have accumulated sick leave days?

A. Yes, thirteen.

Q At what value?

A. $604.87.

Q And, do you have any of those sick leave days to your credit so that you can be paid in time of illness?

A. I do not.

Q And, they were lost by reason of the termination of your

employment with the Post Office Department?

A. They were.

Q Have you accumulated total of the value of the sick leave loss?

A. $2,199.24.

THE COURT. $2,199 how much.

MR. FITZGERALD. Twenty-four cents, your Honor.

THE COURT. I don't want to get out of order as far as the presentation of proof is concerned, but merely suggestion of sick leave and value doesn't mean anything because I don't have any idea how sick leave works, Mr. Hayes.

Q (By Mr. Hayes) Mr. Fitzgerald, would you explain to his Honor how sick leave works?

A. Your Honor, with the rural carrier, we accumulate 13 days of sick leave a year.

THE COURT. What happens to it at the end of the year if you don't use it?

A. It continues to accumulate; you can build up five hundred days if you work long enough, and only the days you use are taken away.

THE COURT. What happens if you are never sick?

A. You still have this protection to fall back on if you are sick at some time in the future.

THE COURT. At any time you might be sick?

A. As long as you are still working for the post office, your Honor.

Q (By Mr. Hayes) Do you have any kind of sick leave protection in your current employment?

A. I do not.

Q Turning your attention, were you contributing to the Civil Service Retirement Fund when you were a postal employee?

A. I was.

Q Was the Federal Government also contributing for each of those years?

A. Yes.

Q And, had you been a civil service employee during the year 1972 from September 1st until the end of the year, how much would the Federal Government have contributed to the civil service?

A. $245.70.

Q And, has that amount been contributed?

A. It has not.

Q And, had you been a postal employee drring the year 197 3, how much would the Federal Government have contributed to the Civil Service Retirement Fund in your behalf?

A. $875.

Q And, in 1974 had you been employed, how much would the Federal Government have contributed to the Civil Service

Retirement Fund in your behalf had you been employed by the Post Office Department?

A. $993.23.

Q In 1975, how much would the Federal Government have contributed to the Civil Service Retirement Fund in your behalf?

A. $775.97.

Q That would be a total of what contribution over the period and when you use 1975, I assume you have done it only up to the first week of August of 1975?

A. Yes.

Q So, how much is the grand total for your federal contribution to the Civil Service Retirement Fund?

A. $2,889.90.

Q You are making a claim for the loss of a car allowance, are you not?

A. I am.

Q Will you explain to the Court the basis on which you claim that you have had a loss of money as a result of the loss of car allowance?

A. I am making the claim on the basis that if I had been working at the post office, I would have been paid X number of dollars in each of these years to drive my car on the mail route, and I would have driven Y number of miles. As it was, I was not working for the post office. I drove Y

number of miles and did not receive mileage. I drove the same number of miles in my partial employment that I would have had I regular employment at the post office.

Q And, what you are saying is that as one of the losses in connection with your new employment, your military employment, you never got mileage but used the same amount of miles in connections with business?

A. Yes, I did.

Q As you would have?

A. Yes.

Q Now, have you calculated what that mileage cost is to you as a result of not getting mileage reimbursement?

A. I have.

Q And, what rate did you calculate it, sir? How much per mile?

A. May I say how I performed this?

Q Yes, go ahead.

A. I called the post office here in Burlington and they gave me a figure which isn't correct. I found out since I calculated it at twelve cents per mile, it should be at a higher rate than that.

Q Can you give us your calculations at twelve cents per mile for September 1, 1972 until the end of the year?

A. $103.68.

THE COURT. What was that?

MR. FITZGERALD. $103.68, your Honor.

Q (By Mr. Hayes) For 1973?

A. $1,639.44.

Q For 1974?

A. $1,639.44.

Q And, for 1975 up to August where we are now?

A. $881.28.

Q And, the grand total that you are claiming as a result of not getting reimbursement for mileage in connection with your work is how much, sir?

A. $4,263.84.

Q In claiming this amount of mileage, are you telling the Court that you used exactly the same amount of miles in connection with your Air Force employment as you used in connection with your postal employment?

A. Yes, I am.

THE COURT. You are talking about going to-and-from your Air Force employment?

MR. FITZGERALD. Yes, I am, sir.

THE COURT. Were you required, in connection with your Air Force employment, to use your car other than getting to the place where you were supposed to work?

MR. FITZGERALD. No, sir, just driving to-and-from home.

Q (By Mr. Hayes) Could you have performed your military

duties without that travel?

A. No, I could not.

MR. REED. Your Honor, I object to this; the form of the question being leading and seems to imply that an automobile and the use thereof is required as part of his military training.

THE COURT. He testified it wasn't for his military training; as far as his military training is concerned.

Q (By Mr. Hayes) In order to get to-and-from your military employment, would you have had to go on a commercial vehicle or use your automobile?

A. I couldn't have gone on a commercial vehicle. I had to use my automobile.

Q In order to get to your military employment?

A. Yes, I did.

Q Are you claiming any loss in connection with life insurance as a result of your loss of federal employment?

A. Yes, I am.

Q And, could you explain to the Court how you calculated, or how you arrived at the fact, or conclusion, that you have a loss as a result of a lack of contribution from the Federal Government for life insurance?

A. I was told by the post office in Burlington here, the individual I talked with, that the Government was paying

27-1/2 per thousand per pay period, and I knew what the insurance would be by looking at the pay, annual salary, and then I took and proceeded to use that figure and figuredd it up 1971 through 1975.

Q And, do you have that federal insurance now?

A. No, I do not.

Q And, are you receiving any in connection with your military employment, any contribution for life insurance?

A. No, I am not.

Q And, could you take it year-by-year, September 1, 1971 to the end of the year and tell me what you lost for that year in the way of a contribution toward life insurance--excuse me, I beg your pardon--September 1, 1972 until the end of that year?

A. Forty-four dollars.

Q That is what the federal contribution would have been had you been fully employed with the Post Office Department?

A. Yes.

THE COURT. Is that automatic or optional insurance?

MR. FITZGERALD. It is optional insurance.

THE COURT. But, you had it up until September of 1972?

MR. FITZGERALD. Yes, your Honor, until I left. I was separated in December of 1972.

THE COURT. Yes, I meant until you left the postal service.

Q (By Mr. Hayes) Can you give the same figure for 1973, Mr. Fitzgerald?

A. $95.80.

Q For 1974?

A. $99.

Q And, for 1975?

A. $74.99.

Q Can you give the total loss that you are claiming as a loss of federal contribution toward life insurance that resulted from termination of your employment?

A. $369.79.

Q Mr. Fitzgerald, did you incur any expenses in connection with any effort to keep and regain employment?

A. Yes, I did.

Q As a rural carrier?

A. Yes.

Q And, are you claiming any telephone expense?

A. I am.

Q Can you tell the Court what that telephone expense is and what the total amount is you are claiming?

A. I am claiming $250 which has been itemized, or can be itemized from the phone bills per month, by the month, and I believe there is two months missing, and I have used the

rate that the other phone calls were because this was an important time period when I made quite a few long distance phone calls, pay phones, $20; that is an estimate, and for total of three hundred dollars.

Q That three hundred dollars was expenses in connection with your efforts to maintain and regain your employment as a rural carrier?

A. Yes. This was long distance call coverage.

Q What type of calls were made? Can you try to give us a summary of the various types of calls?

A. They were made to Boston, Washington; they were made back to Milton; made to any person that I could talk with I thought might help me with this.

Q And, this is not in connection with this litigation that the calls were made?

A. No, it isn't.

Q And, so the total is three hundred dollars?

A. Yes, sir.

Q Did you incur expenses in connection with letters, postage and paper and supplies in your effort to keep and regain your employment as a rural carrier?

A. Yes.

Q Have you kept track of your expenses in this area?

A. Yes.

Q And, do you have a total for the Court of the amount of

money you have expended in this regard?

A. Fifty-five dollars.

Q This has nothing to do with the litigation?

A. No, it does not.

Q And, did you incur any mileage expense in your effort to regain employment and I am talking about mileage expense you haven't included now in that other category. This is mileage expense solely related to your efforts to reg ain employment.

A. Yes, I have.

Q Tell the Court what that mileage expense consists of?

A. Mileage expense consists of round trips from Maine to Burlington, Vermont, twenty round trips at six hundred miles each for $1,440 and fifty round trips from Milton to Burlington and again figured at $240 for a total of $1,680. That was figured at twelve cents per mile.

Q You have a grand total of what for the miles and expense in connection with your efforts to regain employment?

A. $1,680.

Q Now, did you pay an attorney any sum of money to review your file for the purpose of giving you an opinion as to your legal rights?

A. Yes, I did.

Q Can you tell how much you paid and to whom it was paid?

A. I paid $300 and it was paid to Thomas Hayes.

Q That all related to your rights in connection with your termination of employment by the Post Office Department?

A. Yes, it does.

Q Have you incurred any photostating expenses in connection with your efforts to regain employment?

A. I have.

Q Could you tell the Court the total of those photostatic expenses?

A. $116.

Q And, what type of photostating was done in connection with the $116 expenditure?

A. It was photostating of records, letters that were written and many times almost a whole record that I have been photostating at least three or four times and sent to different people inan effort to get them to be able to see what the facts are in the case.

Q And, have you paid out of your own pocket any court costs, service of process costs and fees and mileage paid to witnesses in connection with this case?

A. I have.

Q How much have you paid to date, sir?

A. $240.

THE COURT. Mr. Hayes, we are not going to consider that. That will be part of the taxable costs if your client recovers.

Q (By Mr. Hayes) Turning to another item, are you claiming that you have been denied certain step increases in pay that you would have had, had you been a postal employee in good standing from 1972 until the present?

MR. REED. Objection, your Honor; no evidence to that effect; there is no foundation, if sustained.

THE COURT. I don't understand your objection. I don't understand the question either, but don't understand your objection.

MR. REED. Basically, I don't understand the question. There is no basis as far as the steps concerning step increases.

MR. HAYES. If I may be allowed a moment?

THE COURT. All right.

Q (By Mr. Hayes) Would you explain what so-called step increases you are claiming and on what basis you make such a claim, and tell the Court what a step increase is?

A. A step increase is wage increase that was given after certain number of years of satisfactory service, and you continue up through to the top step of twelve. I am saying that I have not been given some of the step increases that I should have been given, and, therefore, even this sheet that I have been given as to the annual salary may not reflect the annual salary that it should be because I believe the steps are lower, but I do not have access to the figures

to know what the steps are, and I have been unable to gain them.

MR. REED. I object to this evidence. I believe Plaintiff's Exhibit "1U" has included the step increases in it on the right margin--Steps 8, 9, 10, 11, 12 and there is no evidence.

THE COURT. What do you say as to that, Mr. Hayes?

MR. HAYES. May I have my client look at that, your Honor?

MR. REED. In support of my objection, the plaintiff has indicated that these facts and figures on this piece of paper were correct and stipulated into evidence as such.

THE COURT. I agree, if they include the step increases, and, apparantly, they do. We are going to sustain the objection, Mr. Hayes, unless you want to make some sort of offer.

MR. HAYES. May I have just a moment with my client, your Honor? (Mr. Hayes conferred with Mr. Fitzgerald.) Your Honor, we would like to leave this item for now, if we may.

THE COURT. I will sustain the objection at the present time, and you may go back into it. We'll entertain any further objections at that time.

Q (By Mr. Hayes) Mr. Fitzgerald, are you making any claim for a strike settlement payment,and will you tell the Court what that is, and what the basis of your claim is, and the amount of the claim?

A. Yes, I am. In 1971 postal workers went on strike and to get the people to go back to work, the Government gave everybody that was working a $300 sum, a bonus payment as a strike settlement to go back to work, and I never received this either.

THE COURT. When was that payment made?

MR. FITZGERALD. In 1971.

THE COURT. What steps pdid you take to obtain it back in 1971?

MR. FITZGERALD. In 1971 I was still in litigation with the Postal Department trying to stop the adverse action and the appeals that were going on. They still had not been settled at that time, your Honor.

Q (By Mr. Hayes) Are you making a claim for any Christmas overtime pay not included in previous calculations?

A. I am.

Q What is the basis for such a claim?

A. On a heavy duty route the carrier is allowed to work part of the overtime that he has for Christmas help, or part of his Christmas help. He can work it and be paid at the overtime rate.

Q And, the route you were serving on was a heavy duty route?

A. Yes, it was.

Q In years prior to this litigation and prior to your separation, you received Christmas overtime pay?

A. No, I had not. The route went heavy duty right after I left it, but if I had been there in 1972, I would have received overtime pay.

Q On what basis did you calculate?

THE COURT. That would only be had you worked the overtime rate?

MR. FITZGERALD. Yes, your Honor.

Q (By Mr. Hayes) Is it probable that you would have worked the overtime pay period during 1972, 1973 and 1974?

MR. REED. I object; too speculative.

THE COURT. Sustained.

Q (By Mr. Hayes) During the time that you served as a rural carrier, was there ever overtime pay involved?

A. Not on my route there wasn't, but there were on other routes.

Q Is it normal practice for a carrier on a route out of the Milton Post Office to work it overtime for his route?

A. Yes, it is.

MR. REED. Your Honor, I object to the relevance of this line of questioning. The witness testified he didn't work any overtime.

THE COURT. Sustained.

Q (By Mr. Hayes) There was Christmas overtime pay required for that particular route during 1972, '73 and '74?

MR. REED. Your Honor, same objection as to the speculation and the fact he testified he hasn't.

THE COURT. Yes, we will sustain the objection.

Q (By Mr. Hayes) Do you know of your own knowledge, Mr. Fitzgerald, whether the carrier who replaced you worked overtime in 1972, '73 and '74?

MR. REED. Irrelevant; same objection.

THE COURT. Sustained.

Q (By Mr. Hayes) Mr. Fitzgerald, were you able to live on the money that you earned after the termination of your employment by the Post Office Department, or did you borrow any money as a result of that termination of employment?

A. No, I was not, and I borrowed money because of the termination of the employment.

Q Are you making a claim with respect to the interest that you paid on the money you borrowed as a result of the termination of your employment?

A. Yes, I am.

Q Would you tell the Court how much you are claiming in the way of interest paid by reason of termination of your employment?

A. I am claiming amount of interest paid of $10,000 over a

three-year period of time from 1972 of September until the present time.

Q At what rate of interest did you calculate that?

A. Anywhere from twelve to eighteen per cent.

Q Is this pased on your actual records?

A. Yes, it is.

Q And, this is interest that you paid on money borrowed?

A. Yes, sir.

Q And, is it your contention that you would not have borrowed such money had it not been for the termination of your employment?

A. Yes, it is.

THE COURT. I am curious, Mr. Fitzgerald; you say you would not have borrowed such money except for the termination, yet you were actually making more money than you were as a post office employee, were you not?

MR. FITZGERALD. Yes, your Honor, but I was still going through periods of time when I didn't receive any checks at all.

THE COURT. Well, you paid off these loans as you went along?

MR. FITZGERALD. Yes.

THE COURT. And, you paid in a three-year period of time, $10,000 in interest?

MR. FITZGERALD. Yes, your Honor.

Q (By Mr. Hayes) Are you making a claim for time that you have expended in your efforts to regain employment?

A. Yes, I am.

Q And, from the beginning of your efforts until January 1, 1974, have you calculated the number of hours you have spent working on this effort to regain employment?

MR. REED. I object to this line of questioning insofar as there was testimony he went directly to the armed services and regained---

THE COURT. We'll sustain the objection because this would be covered in any other damages that he might recover if he recovers any back salary, or anything due him. This compensates him for those efforts. Objection sustained.

MR. HAYES. We would like to note our exception. May I state the grounds?

THE COURT. Yes.

MR. HAYES. The ground is that there is time spent that would not have been spent on military duty during the period subsequent to 1970, and had he been a full time employee during that period of time with the Post Office Department, he would not have had to engage in this effort, and we feel it is extra effort expended beyond his military duty during the post-discharge period.

THE COURT. We'll note your exception and

sustain the objection.

Q (By Mr. Hayes) Are you also making a claim, MR. Fitzgerald, with respect to silver certificates and silver coins?

A. I am.

Q Tell us the nature of what that claim is, and how it is related.

MR. REED. I object to that matter concerning damag es because this is purely beyond the scope of any foreseeable claim against the post office if he decides to transact some business and ties it into the fact he may have needed money. I don't believe this is within the scope.

THE COURT. We'll let Mr. Hayes go and rule he hasn't finished his question. I am curious. You may proceed, Mr. Hayes.

Q (By Mr. Hayes) Mr. Fitzgerald, can you tell his Honor how it is that you make a claim in connection with the sale of silver certificates and silver coins, and how you relate this to your loss of employment with the Post Office Department?

A. The claim is made on the basis of just over $800 for silver certificates and coins that were used either at the face value, or at a very small increase when we were converting into cash, because I needed more money, and at this time these same certificates or silver would be worth three

times what they were worth then.

MR. REED. We certainly can't be held to that.

THE COURT. We'll sustain this objection. We don't think that is a proper item of damages, Mr. Hayes.

Q (By Mr. Hayes) You have made a claim for mental anguish, have you not, Mr. Fitzgerald?

A. I have.

Q And, can you describe the state of mind and the physical state that you have experienced at various times as a result of this termination of employment? Can you start with the beginning of this termination until the present time and tell the Court what has happened to you, personally, and mentally and physically as a result of this?

A. Your Honor, when this first started in 1970, I would hear from people on the streets that I had been fired, and I would hear it coming from other towns. In fact, the word had been passed around I had been fired from my job in civil service and it took a great deal of time on my part Saturdays, Sundays, evenings; my wife says she doesn't know when she can remember we haven't had to live with this for the past five years. It has been a constant thing there all the time; some nights she hasn't been able to sleep and when she doesn't sleep, I don't sleep, and I have had the same problem, and some times when I am away from home, I

wake up in the night and would be unable to sleep ona account of this, and this is all;I can think of different things and trying to go through the thing and see why people allowed the regulations to be broken and why the laws can be broken and people are not obligated to follow them. Yet, nobody seems to care enough to make the people follow the laws that they are supposed to follow in their own postal regulations and this has been a constant depressing thing to receive a letter back from a congressman saying that he---

MR. REED. I object, your Honor.

THE COURT. Yes, I will sustain tha objection and strike the reference to the congressman.

A. It was a continual battering your head up against a wall and nobody seemed to listen and when the replies were answered to the charges that were made, they were inaccurate, and you try to get them to go a little bit further to look into it a bit further where maybe they would get the right answers and they refused to go further and say "This is all we can do," but I have lived with this for five years and my wife and children have lived with it, too.

Q (By Mr. Hayes) Has your security status been the same now as it was when you were a postal employee, Mr. Fitzgerald?

A. It is not.

Q And, is that a matter of concern to you?

A. It is, as you get older.

Q How has your security status changed?

A. Any time that I can't pass a flying physical, I am out of a job.

Q And, if you were in federal employment and you were physically disabled, what protection would you have?

A. I would stillbe able to perform a job without having perfect health. I could perform a civil service job with one leg, or one arm, or one eye, or wearing thick lens glasses; any number of things.

Q And, if you were terminated by the Post Office Department, not in a cause termination but by reduction in force or something of that kind, would you have any protection if you were a civil service employee?

A. Yes, I would.

Q What protection would you have?

A. With over twenty years service and being over fifty years old, I would have a retirement that would come to you automatically anyway.

Q And, do you have that kind of security to look forward to if you become separated from your Air Force National Guard?

A. I do not.

Q And, all these are related to your claim for mental anguish?

A. They certainly are.

put in my mailbox in Bangor, Maine, and the actual day I received them, I don't recall when it was.

THE COURT. Isn't it unusual when you are going on active duty, such as active duty for training for an extended period of active duty, not to receive copies of your orders in advance?

MR. FITZGERALD. No, it is not, your Honor. Even annual training orders that I receive are quite often received two or three days after I have performed the duty. I realize they are probably cut before, but in the process of getting them up through direct, they are not there. In fact, I have gone down and waited for them to be cut and to get copies made so I could have them on a couple of occasions. I have gone on trips to Viet Nam and come back two weeks later and the order is still not cut, or I don't have copies of the orders. This has been in the past with another unit. It is not unusual or uncommon to have this happen, your Honor.

THE COURT. All right, Mr. Hayes, you may proceed.

REDIRECT EXAMINATION

Q (By Mr. Hayes) Mr. Fitzgerald, the Court asked you to prepare for counsel and for the Court a summary of all of the dates with respect to which you were testifying yesterday, from September, 1972 until the present, giving your particu-

lar status on those days. Have you done that, sir?

A. Yes, I have. There are two complete copies, and this is a complete copy here. The other copies are missing; three of the copies are missing the front page.

Q We do have one complete set?

A. We have two complete sets here.

MR. HAYES. We would like to mark that as Plaintiff's "1W".

(The document was marked by the Deputy Clerk)

Q (By Mr. Hayes) I show you an exhibit called Plaintiff's "1W" consisting of five different pages and ask you if you can identify the exhibit? (Handed to the witness)

A. Yes, I can.

Q What is the exhibit, Mr. Fitzgerald?

A. Those are the figures that I took off my records last night which indicate the type of duty performed in 1972, in 1973, in 1974 and to the present time, and this would be classified either as ADC Alert, additional flying training periods, equivalent training, and in the additional training there are days included in there that are not annual training. "AT" stands for annual training. There are days in there that are not; these are days I flew on exercises, like in the middle of the night we had exercises, and they gave us two days pay to be on the exercises. I performed that because I had no other work.

Q What is the significance of that, Mr. Fitzgerald?

A. The significance of all the military duty?

Q No, the significance--you say there were days not annual training where you were called in the middle of the night.

A. These are active duties, denote this tour and tours of ADC Alert I was on.

MR. HAYES. We ask its admission, your Honor.

MR. LEVIN. So far as the request, we have no objection, your Honor.

THE COURT. All right, admitted.

(Plaintiff's Exhibit "1W" was received in evidence.)

THE COURT. To make absolutely certain we understand the abbreviations, Mr. Hayes, I ask that you have your client note on the front page of Plaintiff's "1W" what the various abbreviations stand for. I don't think he needs to go into them.

Q (By Mr. Hayes) Mr. Fitzgerald, turning your attention to the matters of quarters allowance, it was brought out on cross examination yesterday that you received some type of quarters allowance that was not included in the W-2 Forms issued you by the Air Force, and that this quarters allowance was for the period, or the quarters allowance referred to. Was any quarters allowance received between September 1, 1972 and the present?

A. Plus the days for annual training or exercises. Those two figures added together are the days I received quarters.

Q Did you receive quarters allowance for UTA?

A. I did not.

Q Or, equivalent training?

A. No.

Q Additional flying training periods?

A. No.

Q Can you tell us whether your personal situation with respect to quarters had any change as a result of the termination of your employment with the Post Office Department?

A. It did.

Q Can you tell the Court what change, if any, took place in your situation with respect to quarters?

A. At the time that I applied for re-employment, my quarters and subsistence dropped to one-half of what it was previous to that time.

Q Would you clarify that, please, Mr. Fitzgerald?

A. Well, I testified earlier that as of 1 September 1972, that I was working half time, and, therefore, I received half quarters for each day of active duty. I was working half time and received half payment for quarters.

MR. REED. I object. I don't see the relevance this has to his postal employment at all.

MR. HAYES. The answer is not responsive.

THE COURT. I will sustain the objection on the basis the answer is not responsive.

Q (By Mr. Hayes) Mr. Fitzgerald, did your quarters change after you were terminated from your employment with the Post Office Department? Did your quarters situaion change?

A. Yes.

Q What was the change in your quarters situation as a result of your termination of your employment?

A. I moved to the State of Maine and I brought my family up there, too.

Q Did you purchase a house there?

A. I did.

Q And, can you tell us the story about that house? Do you still have the house?

A. I still have the house.

Q For what purpose did you purchase that house?

A. I purchased the house for my family and myself to live in.

Q And, you still have your home in Milton?

A. Yes, I do.

Q Did you incur tax expenses with respect to those quarters in Maine?

A. I did.

Q And, at that same time were tax expenses being incurred at your place in Milton?

A. Yes.

Q Did you have maintenance repair expenses at both places?

A. I did.

MR. REED. I object. If he chose to live in two homes that has no bearing on the issue at hand.

THE COURT. I will sustain the objection.

Q (By Mr. Hayes) When you entered on active duty, were you given any assurance by the military that you could have permanent employment with the military as a result of this change?

A. No, I was not.

Q Did you regard the movement to Maine as a temporary move?

A. I did.

Q And, as a result of this temporary move, was it necessary for you to incur quarters expenses?

A. It was, if my family was to stay with me.

Q Had you ever intended of permanently residing in the State of Maine?

A. No, I did not.

Q What was your intention with respect to residence?

A. I intended to return to Vermont; Milton, Vermont.

Q But for the termination of your employment, were the Maine quarters expenses occurred?

MR. REED. That calls for a conclusion and he is leading the witness.

THE COURT. Sustained.

Q (By Mr. Hayes) Can you tell the Court why you incurred the expense in Maine?

A. Because I wanted my family to be with me, and I wanted to be able to spend time with them; more time than I had spent in the past.

Q Even if your family had not been taken with you, would you have needed a place to live in Maine?

A. I would.

Q Turning to the period September 1, 1972 until August of 1975---

THE COURT. Excuse me, Mr. Hayes. When did you buy the house in Maine?

MR. FITZGERALD. It was in, I think, approximately January or February of 1970. 1971. Excuse me, your Honor, 1971.

THE COURT. Is that the time you were on extended active duty?

MR. FITZGERALD. Yes, your Honor.

THE COURT. All right, Mr. Hayes.

Q (By Mr. Hayes) During all the period that you were on military duty from January of 1971 until August of 1972, did you keep the house in Maine?

A. Yes, I did.

Q Was it used by your family?

A. It was.

Q Have you attempted to sell or dispose of that house?

A. Yes.

Q Have your efforts been successful?

A. Partially successful.

Q How do you explain that, sir?

A. I have had an agreement now to sell the house, although the people still have not purchased it, but I expect to close on it next month.

Q You have been attempting to sell it for a long period of time?

A. Since 1971.

MR. REED. I renew my objection on this whole line of inquiry as only being in support of what we allege is improper damages in this matter.

THE COURT. We will let the answer stand and we'll make a determination as part of our consideration of the case.

THE COURT. You say you were trying to sell the house since January or February of 1971?

MR. FITZGERALD. No, I purchased it in January or February of 1971, your Honor, and I have been trying to sell it since about the end of 1971, approximatly.

THE COURT. When did you transfer from the Maine National Guard to the Vermont National Guard?

MR. FITZGERALD. It was in the month of February, 1974; the exact date, I am not sure, your Honor. I believe it was about the 20th or 22nd of February.

Q (By Mr. Hayes) Mr. Fitzgerald, you were interrogated as to whether or not there was any free medical care available to you in the armed services, and you indicated, if I recall correctly, that doctor services were not available to you, but something else was available. Will you clarify what that something else was?

A. When I was on active duty, I had doctors' services available, but the doctor wasn't there. I would have to go to a doctor, or to an Air Force hospital, and my family, a good share of the time the family was not covered at all. This was just for myself. They had no insurance to cover them.

Q Was there an Air Force hospital near Bangor?

A. The nearest one I can think of at the present time was at Pease Air Force Base.

Q Where is that?

A. In New Hampshire.

Q Do you know the mileage, or approximate mileage?

A. Probably a six hour drive down there; probably a couple hundred miles, I would guess.

Q And, were there any doctors available to you at Bangor while you were in the military service?

A. On the weekend drills there might be somebody there; other than that, no.

Q There was a reference to some non-medical personnel; that is, non-professional personnel such as doctors that you could have some contact with. Can you explain what that was?

A. They have an infirmary where they have technicians that work in the infirmary;if you need some nose drops you can get them or an inhaler or some aspirin, or Maalox tablets, or something like that, but as far as really giving out drugs, they aren't authorized to give out drugs, and you just can't get them there.

Q There are no diagnosis facilities there?

A. No.

Q Now, turning your attention to the matter of military retirement, it has been suggested by counsel for the defense that you got military retirement credits, and while you were in the service, and this is referring to the period September 1, 1972 to the present time. Did you get military retirement credits during that period of time?

A. Yes, I did, providing that it would be used.

Q Providing that it can be used? What is that, sir?

A. Again, my retirement I have coming to me as a reservist is no good to me until I am sixty years old, and even then it isn't good to my family either, and if I die before I

am sixty years old, nobody will draw anything on my retirement.

Q Were you getting any retirement credits when you were a full time employee with the Post Office Department as a result of your various military activity?

A. Yes, I was.

Q And, how was that military retirement credit compared to what you got while you were on full time service?

A. It would be at least two-thirds of the credit that I got while I was on military service.

Q So what you are saying is some of this military credit you would have accumulated if you worked for the Post Office Department?

A. Approximately two-thirds I would have received any way in addition to the postal retirement.

Q Turning your attention to the years from 1959 through November 2nd of 1970, did you accumulate retirement credit, military retirement credit during those years?

A. I did.

Q It has also been brought out in cross examination that while you were separated from the post office and on military service that you got Social Security coverage. Was this something new, or did you have Social Security coverage before you were separated by the Post Office Department?

A. I have had Social Security coverage since 1947, I believe

Q Were you getting Social Security coverage while you were an employee of the Post Office Department as a rural carrier in Milton?

A. I wasn't getting it from the Post Office Department, but I was getting it from the military at the same time.

Q And, that was the same source you got it after you were terminated?

A. Yes.

Q Were you getting the full Social Security coverage; that is, the maximum coverage while you were a post office employee because of your military duty?

A. Very close to maximum.

Q One of the matters that needs clarification, did I understand you to say during your direct testimony that the mileage expense you are asking for is mileage incurred in the military since your discharge?

A. It is the mileage that I have driven because I didn't have the employment in Milton. If I had been in Milton, I would only have driven two miles.

Q And, the figure that you took is the same as what your car allowance would have been had you been with the Post Office Department delivering the mail?

A. Yes. It was because the mileage came out the same.

Q But you are not asking this Court to give you money for mileage of driving a rural route when you weren't driving

the rural route, is that correct?

MR. LEVIN. He is leading the witness and I object on the basis this is an improper damage.

THE COURT. I will sustain the objection, but the question is leading.

Q (By Mr. Hayes) Well, will you explain to the Court, Mr. Fitzgerald, just what the theory is behind your attempt to recover money for a car allowance?

A. If I had been working at the Milton Post Office, I would have been driving approximately 57 miles per day for a six-day week. As it was, I was driving 80 miles per day and driving approximately five times in the week, so I was driving this same amount of mileage that I would have if I had been working at the post office.

Q And, you are claiming a loss?

A. Yes, I am.

Q What is the loss?

A. The loss is equivalent to the car allowance I would have received from the Postal Department.

THE COURT. But that driving you did for the military was not in connection with your job, is that right?

MR. FITZGERALD. That is correct.

THE COURT. It was driving you did to get to your job and to return home?

MR. FITZGERALD. Yes, your Honor, because I

wouldn't have had to drive this mileage if I was working at the Milton Post Office.

THE COURT. You were living in Maine at the time?

MR. FITZGERALD. Yes, sir.

THE COURT. And, living 40 miles from the base?

MR. FITZGERALD. Yes, your Honor.

Q (By Mr. Hayes) Turning your attention, sir, to the matter of life insurance, you stated that you had some kind of coverage while in the military service?

A. Yes.

Q Was this coverage that you had before you were terminated by the Post Office Department?

A. Yes, it was.

Q So, it was a continuation of the same type of military life insurance coverage?

A. I received a few more days of coverage, but it was a continuation of the same type of insurance.

Q What do you mean a few more days of coverage?

A. When I was strictly on ADC Alert, I would be covered by another policy, but I was already paying into a policy that would cover me for the additional flying training periods and UTA which was paid up for the year, regardless of whether I used the other one or not.

Q This is something you paid for?

A. Yes, it is.

Q But the life insurance damage that you have claimed here, you are claiming damages for an alleged loss of payments by the Federal Government toward life insurance?

A. I am claiming the amount the Government would have paid for the life insurance if I had been working.

Q And, that life insurance is not now in force?

A. That is correct, yes, sir.

Q Mr. Fitzgerald, turning your attention to the question of mental anguish dealt with on cross examination and direct examination the word "security" was used in interrogation of you on direct, and the word "security" was also used on cross examination, and in one instance you indicated that you had a fear of loss of security, and another instance you indicated there was no fear with respect to security. Is there a conflict in your testimony, or can you clarify for the Court the difference between the two answers that were given on direct and cross?

A. I believe what you are referring to is that I did have and suffered anguish from loss of employment at the Postal Department, and a loss of approximately seventeen years toward retirement, and these things caused mental anguish, but in respect to the job at the Guard that I have now, I don't have any anguish that I may not be able to pass a

physical and this would terminate my employment there, but I know my employment will be terminated there within a year or two years any way.

Q Are you saying you have no concern that you will be discharged medically?

A. I would have some concern, but not very much concern.

Q Is that what you were attempting to point out to counsel for the defense?

A. Yes, it is.

THE COURT. In other words, the state of your health has remained good?

MR. FITZGERALD. Yes, your Honor.

THE COURT. You have not been obliged to consult with any doctors or psychiatrists with reference to this mental anguish you may have sustained?

MR. FITZGERALD. No, your Honor.

Q (By Mr. Hayes) Mr. Fitzgerald, as to the matter of Px and commissary privileges, did you have substantially the same privileges with respect to commissary and PX before and after the termination of your postal employment?

A. Yes. In fact, I probably used the commissary more before I was on full time active duty.

Q So you are saying, in effect, you did not--we'll let the answer stand. Now coming to the question of military orders, did you get military orders when you went on UTA

type duty?

A. I did not.

Q But, there was a question asked you yesterday, could you have provided orders to Mr. Devarney, and I thought you answered in the affirmative.

A. I thought they were talking in respect to ADC Alerts, active duty.

Q Then you could not have provided military orders for UTA for Mr. Devarney?

A. No, I could not.

Q Were orders cut in all cases for your UTA?

A. I don't know of any orders that were ever cut for UTA. I have never seen one.

Q Turning your attention to days of equivalent training, could you have gotten orders for days of equivalent training?

A. No.

Q Were orders cut for days of equivalent training?

A. Not to my knowledge.

Q So it would have been impossible for you to turn in orders either in advance or afterward over to Mr. Devarney with respect to that type of training?

A. Yes.

Q It would have been impossible?

A. It would have been impossible.

Q Turning your attention to days in which you spent on addi-

tional flying training periods, were orders cut for additional flying training periods?

A. No orders were cut for additional flying training periods.

Q They would not be made available to you in advance because there were no orders?

A. That is correct, and this was explained to Mr. Devarney.

Q Did you also explain to Mr. Devarney there were no military orders available for UTA and equivalent training and additional flying training periods?

A. I did. I told him he was asking for the impossible in some cases because there just weren't any.

Q With respect to ADC Alerts, you indicated orders were cut. Were these always available to you before you arrived on active duty?

A. No.

Q In some cases, were they cut after you had performed service?

A. Yes.

Q Was that within your control as to whether they were cut before or after military service?

A. I had no control over it. If they told me I was on active duty, I took their word for it, and I knew eventually the orders would come.

Q So the determination was not yours to make?

A. That is correct.

Q You will recall in two adverse actions, July 17th and November 2nd, there are certain days that you are charged with being away without leave, is that correct?

A. Yes.

Q On any one of those days, did Mr. Devarney make a specific request of you to turn in orders with respect to the days of absence you were seeking?

A. Not to the best of my recollection.

Q And, had he asked you, could you in all cases have complied with his request?

A. No.

Q And, that is because of the reasons you stated previously?

A. Yes, it is.

Q Do you ever recall a situation with respect to any one of those days mentioned in either adverse action, days called AWOL, in which Mr. Devarney stated to you with respect to those days, "If you furnish me an order, I will grant you permission to go"?

A. No.

Q Or words to that effect?

A. No.

Q Mr. Fitzgerald, if you were granted by this Court permission to go back to the Postal Service, would you return to the Postal Service?

A. I would.

Q As a rural carrier?

A. Yes.

Q In any office ordered by the Court?

A. Would you repeat that part again?

Q Is your statement that you would return to the Postal Service limited to returning to Milton?

A. I want to return to the Milton office, but if I was ordered to go some other place, I guess I would have to go.

Q Then you do intend, assuming that the Court should find that you are entitled to it, you do intend to return to the Postal Service?

A. Yes, I do.

Q MR. HAYES. We have no further questions at this time. Excuse me, your Honor. May I continue with respect to the notes I overlooked?

THE COURT. Certainly.

Q (By Mr. Hayes) If I may continue, Mr. Fitzgerald, there was some discussion of money that you had paid out in interest, and you alleged in court that this interest expense was incurred as a result of the termination of your employment. Have you had an opportunity to review some of the documents within your custody and possession that relate to the interest question?

A. Yes, I have.

Q And, have you brought some of those documents into court?

A. I have.

Q And, with respect to those documents, are you able to show--strike the question. May I inquire as to what documents you have with you? Can you tell us by summary fashion?

A. I have some notes of some receipts. I didn't bring any checks. Some are bills where I have been billed for interest rate and just that type of paper.

Q Do you have bank notes here?

A. Yes.

MR. HAYES. May I proceed to examine with respect to those, your Honor?

THE COURT. Are they here, and marked, and so on?

MR. HAYES. They were brought in at court time, your Honor.

MR. FITZGERALD. There is a brown envelope on the desk there.

MR. HAYES. Is this the envelope? (indicating)

MR. FITZGERALD. Yes, it is.

THE COURT. They will have to be marked if he is going to identify them.

MR. HAYES. May I combine in one exhibit notes relating to different loans?

THE COURT. Yes.

Q (By Mr. Hayes) Mr. Fitzgerald, I show you Plaintiff's "1X" which I asked be marked. It consists of a number of parts, does it not? (Handed to the witness)

A. It does.

Q I wonder if you would take each part and explain to the Court what it is and how it relates to the claim of yours that you suffered interest damage as a result of the termination of your employment? Take the first one first, state what it is, and then discuss it, please.

A. First one is a note---

MR. REED. Excuse me, your Honor. Are those going to be offered as evidence, because he is testifying from them.

THE COURT. Identify the notes first, and then offer them.

MR. REED. Well, at this time, at least, note our objection. This is in support of what we believe to be an improper issue of damages.

THE COURT. All right, we'll note your objection.

Q (By Mr. Hayes) Just tell his Honor in summary form what it is first.

A. It is a note. Do you want me to say who it is?

Q Simply say a note.

A. Note dated November 4, 1974; seven hundred dollars.

Q And, can you identify the note? You have simply said it is a note. Can you identify the note?

A. It has my signature on the bottom.

Q It is a note you signed?

A. Yes.

Q And, runs to whom?

A. To the Merchants National Bank.

Q For what amount?

A. Seven hundred dollars.

Q And, would you give me the date of the note?

A. November 4, 1974.

Q November 4, 1974?

A. Yes.

Q For what purpose was this loan incurred?

A. The note was actually incurred November 5th of 1973 and was a thousand dollars at the time, and it had been reduced down to that amount at that time, and in 1973, it was incurred--I believe I used part of this to pay some taxes and to pay some other bills, smaller bills.

Q Are those not bills or taxes you would have incurred even if you had been employed by the Post Office Department?

MR. REED. Object to the question. It is leading.

THE COURT. We'll take the answer.

A. I didn't hear your question. He was talking.

Q (By Mr. Hayes) Mr. Fitzgerald, what this Court is trying to get at, and we don't want to spend a great deal of time, it is either related or not related to your claim for damages. You made an allegation that you should have interest damages because you claim you have suffered interest damage as a result of the termination of your employment. Now how does that relate to the termination of your employment, sir?

A. Because this money was borrowed because I did not have money that I would have had if I had been working full time, and as a result, I needed to borrow money to meet my expenses, and I had to borrow this money.

Q And, are there a series of notes that are renewals of the same note at lesser amounts?

A. Yes, there are.

Q And, the original sum was how much, sir?

A. One thousand dollars on this particular note.

Q What is the last renewal?

A. The one I have here is November 4, 1974.

Q And, that is paid off?

A. It is paid off at this time. I don't know if it was paid at that time, either. I am not sure, because it would have gone into 1975.

Q And, each of these renewals state the interest that was to be paid?

A. Yes, it does.

Q And, you actually paid the amount of interest that is on each one of these notes?

A. Yes, I have.

Q But, the amount of money borrowed was never in excess of the original figure that you cited?

A. Other notes have been, but not in this particular case. This note was a note at the time that I mentioned in 1973, November 5th, I believe it was, 1973, was the original note and it takes quite a little time to put these all together and put them in order. If I had more time I could have ran one note as it went right through.

Q Will the correct interest figure be obtained by taking the interest figures that you were charged on each one of these notes?

A. Yes, it will.

Q And, you actually paid each one of these interest figures?

A. I did.

MR. HAYES. We ask the admission of "1X," your Honor.

MR. REED. No objection, but note our objection to the whole line again.

THE COURT. Let me see it. (Handed to the Court) Mr. Hayes, it is not the intention of the Court to go through each one of these and try to compute the

interest in support of your client's claim. Do you have notes totalling in the face amount enough to support interest in the amount of ten thousand dollars?

MR. HAYES. In court, your Honor?

THE COURT. Yes.

MR. HAYES. No, I do not.

THE COURT. Mr. Fitzgerald, why do you say that you had to borrow this money?

MR. FITZGERALD. I borrowed part of it to purchase the home in Maine so my family could be with me.

THE COURT. Is some of this interest you have been telling us, mortgage interest on your home in Maine?

MR. FITZGERALD. Some of it is.

THE COURT. A large amount of it?

MR. FITZGERALD. A substantial amount, your Honor.

THE COURT. How much money did you borrow other than for the purchase of a home in Maine?

MR. FITZGERALD. I haven't tabulated it that way, your Honor. In fact, I couldn't even tell you at this point just how much money it is. I would have to go through the notes and put them together and get them in order.

THE COURT. We are going to exclude "1X", and we are going to exclude any testimony at this time, Mr. Hayes, concerning these notes. It doesn't appear that the

witness is in a position to testify and document his claim of interest, and, furthermore, the Court certainly feels any interest that he may have paid because he decided to purchase a home in Maine is not a proper item of expense, as far as this lawsuit is concerned, and there has to be considerably more proof, as far as the Court is concerned, that he borrowed the money for living expenses. So we are going to exclude this. We don't think this is a proper item of expense for consideration as an item of damage in this suit.

MR. HAYES. We have no further questions of this witness at this time.

RECROSS EXAMINATION

Q (By Mr. Levin) Mr. Fitzgerald, I am curious about this home you have up in Maine. How much did you pay for it when you bought it?

A. Which home?

Q The one up in Maine.

A. I have two homes in Maine.

Q Can you explain to us why you need two homes in Maine and one home in Milton?

A. I purchased a home in Maine and my family wasn't satisfied with the location. We were living in the city. We had never lived in the city; we always lived in the town, the rural area, and my wife was not content there, so we

decided to try and find another place to live.

Q That is why you moved forty miles away from the Bangor Air Base?

A. I was forty miles away at that time.

Q Before you moved?

A. Yes.

Q And, the second house was equally far away?

A. Yes, it was.

Q The home that you are selling now in Maine, are you selling that for more than what you originally purchased the home in Maine?

A. I am.

Q So you are actually making a profit for having bought homes in Maine?

A. I am not making a profit.

Q You stated that you had to drive eighty miles a day round trip to get to your military duty, is that correct, and you are claiming damages for those eighty miles a day at twelve cents a mile, is that correct?

A. The same. I was driving as much there as if I had been working full time at the post office.

Q But the mileage you are claiming, is the base for your damages the commuting expense to get to work, is that true?

A. Yes.

Q Were you paid to commute from your home in Milton to the

Milton Post Office?

A. No.

Q. Why should you be paid for commuting between your home in Maine and the Maine Air Base just because it happened to coincide with the amount of mileage you would have driven in your work for the Postal Service?

A. As I understand the Selective Service Law, it said I would be reimbursed for expenses I had because of not being re-employed in my original job, and these are expenses that I would not have had if I had been re-employed in the Milton Post Office.

Q. While you were living in Maine, did you rent your home in Milton?

A. I did not.

Q Mr. Fitzgerald, there was some talk about the fact on re-direct examination that there were no orders for you for the UTAs, equivalent training, and AFTT?

A. Yes.

Q Were UTAs scheduled in advance?

A. Yes, they were.

Q Did you have that schedule in advance?

A. Yes.

Q Could you have told Postmaster Devarney in advance when you had UTAs scheduled?

A. Yes, and I did.

Q You did?

A. Yes.

Q How far in advance did you tell him?

A. I never told any certain number of days.

Q How far in advance did you know? Are they scheduled six months in advance? A year in advance?

A. At that time, I don't believe they were printed on our monthly paper in advance. At the present time, both in Vermont and Maine, they print them way ahead so I could almost tell you what I am going to do next June at this time.

THE COURT. Excuse me. You had some advance notice as to when the UTAs were going to be held, did you not?

MR. FITZGERALD. Yes, your Honor.

THE COURT. And, how much advanced notice did you have? They just didn't call you up and say "We are having UTA this weekend, be here"?

MR. FITZGERALD. No. I knew at least a month ahead of time when the UTA was.

THE COURT. You had some advance knowledge even beyond a month, didn't you?

MR. FITZGERALD. I could have found out more than a month ahead if I had tried to find out. As a rule, I only knew when the next UTA would be.

DEFENDANT'S EXHIBIT C

AGREEMENT BETWEEN POST OFFICE and National Rural Letter Carriers Association

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B. Formulation of Leave Program

The formulation of the leave program within a local installation shall be a subject of (1) negotiation with employee organizations having exclusive recognition for the craft at that level, and (2) consultation with the employee organization(s) having formal recognition for the craft at that level; and shall be within the following general framework:

1. Installation heads and supervisors shall be responsible for scheduling and granting annual leave on an equitable basis with due regard for the needs of the service and the welfare of employees. Care shall be exercised to assure that no employee is required to forfeit any part of his annual leave.
2. Each employee shall be responsible for planning his vacation period in accordance with his personal desires subject to the approval of his supervisor.
3. Establishment of the choice vacation period(s) shall be determined by local negotiations or consultation, as appropriate, before December 1 for the following year, and may cover one or more designated choice periods during the leave year. Local agreements may exclude specific periods, in addition to December, from the choice vacation period(s) because of known local service requirements for such periods.
4. The vacation period should normally start on the first day of the employee's basic work week. This may be the subject of local negotiation or consultation, as appropriate.
5. Except as provided in 5c, regular and career substitute employees shall be granted annual leave during the choice vacation period(s) as outlined in 5a and 5b.
   a. Regular and career substitute employees who earn 13 days annual leave per year shall be granted one choice of up to 10 days continuous annual leave during the choice vacation period(s). The number of days annual leave, not to exceed 10, shall be at the option of the employee. The remainder of their annual leave may be granted at other times during the year.
   b. Regular and career substitute employees who earn 20 days or 26 days annual leave per year shall be granted one choice of up to 15 days continuous annual leave during the choice vacation period(s). The number of days annual leave, not to exceed 15, shall be at the option of the employee. The remainder of their annual leave may be granted at other times during the year.
   c. The subject of whether an employee may at his option request two selections during the choice vacation period(s), in units of either 5 or 10 working days, the total not to exceed the 10 or 15 days referred to in 5 a and b above, is a matter for local negotiation or consultation, as appropriate.
   d. The subject of whether an employee ordered for military training during a choice vacation period is eligible for scheduled annual leave during a choice vacation period is a matter for local negotiation or consultation, as appropriate.
   e. The subject of whether an employee who is called for jury duty during his scheduled choice vacation period is eligible for another available period in lieu thereof is a matter for local negotiation or consultation, as appropriate.
   f. Every effort should be made to grant annual leave (leave without pay if employee elects or if annual leave is exhausted) to employees to attend National conventions or state conventions (regional conventions where there are no state conventions) of Employee Organizations provided the installation head is furnished proper notification from the Organization that the employee is a delegate to the convention. The subject of whether this leave shall be charged to the employee's choice vacation period is a matter for local negotiation or consultation, as appropriate.
6. Installation heads may, upon request of an individual, grant a vacation period longer than that prescribed in 5. a. and b. above, provided this additional leave does not deprive any other employee of his first choice for scheduled vacation.
7. The number of employees granted annual leave during any given period shall be governed by service require-

ments and the number of employees available for necessary replacement.

C. Implementation

The following general rules shall be observed in implementing the vacation planning program:

1. The installation head and the exclusive organization or the formal organization for the craft, as appropriate, shall meet in consultation not later than the month of January to implement the vacation planning program, as previously established in B–3.
2. The installation head shall meet with the representatives of the employee organizations to discuss the workload data, past, present and anticipated.
3. The installation head shall:
   a. Determine the amount of annual leave accrued to each employee's credit including that for the current year, the amount he must take to avoid forfeiture, and the amount he expects to take in the current year.
   b. Determine the maximum number of employees that may be granted leave each week during the choice vacation period(s). In making this determination, consideration must be given to mail volume and other workload data for comparable periods in preceding years as well as anticipated workloads and current volume trends.
   c. Determine a final date for submission of applications for vacation period(s) of the employee's choice during the choice vacation period(s).
   d. Review application of each employee as promptly as possible. With due consideration to service requirements, make every effort to grant vacations as desired by the employees. Provide official notice to each employee of the vacation schedule approved for him.
   e. No later than November 1 publicize on bulletin boards and by other appropriate means the beginning date of the new leave year.
4. A procedure in each office for submission of applications for annual leave for periods other than choice periods may be established through negotiations or consultation.

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5. In order to meet advance commitments for granting annual leave when normal replacements are not sufficient, the work week of substitutes and/or regular employees may be expanded through the authorization of overtime or additional temporary substitutes may be employed.
6. Whenever for justifiable reasons an employee desires to take his vacation during a period which conflicts with that of other employees already scheduled, every reasonable effort will be made to work out a mutually agreeable exchange of periods.
7. Rural carriers shall be granted annual leave in minimum units of one day in accordance with their personal wishes, provided a substitute rural carrier of record is available for their replacement. It shall be the responsibility of each rural carrier to plan his vacation at times when a substitute of record is available.
8. Installation heads shall prepare a written outline of each step of the vacation leave plan resulting from negotiation or consultation. A copy of the plan shall be kept on file in the installation head's office, and a copy shall be placed on employees' bulletin boards, or otherwise made accessible to all employees.

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D. Leave for Substitutes

1. Sick and annual leave shall be credited to substitutes as provided in Postal Manual 721.
2. Substitutes shall be granted sick leave not to exceed eight hours for each day the substitute is sick and is normally scheduled to work. Determination of the number of hours shall be as follows:
   a. When the substitute normally would be scheduled for and normally would perform eight hours, the sick leave granted during the period of illness shall be eight hours per day.
   b. When the substitute normally would be scheduled for and normally would perform less than 8 hours per day, sick leave granted shall equal the hours he would have worked on the day(s) absent.
   c. When the substitute has no regular schedule but normally performs less than 8 hours per day, sick leave granted shall be equal to the average hours worked

C. An employee in a duty status and acting in the scope of his employment, who has been duly authorized by a proper postal official to travel from one unit of a post office to another, will be covered by the provisions of the Federal Tort Claims Act.

D. An employee who reports to a unit as scheduled and is then reassigned to a different unit shall be entitled to transportation costs to return to his original reporting unit at the completion of his tour. This provision is not applicable if the employee is regularly scheduled to the different units.

ARTICLE XVIII

Position Descriptions

A. Position Identification

Each position ranked as an Individual Position either by the Department or in the field shall contain the Civil Service Commission occupational code number and a reference to the key position which served as the basis for the salary level ranking of the position.

B. Annual Position Evaluation Review

A report on the results of the Annual Position Evaluation Review shall be made an agenda item for discussion at the next labor-management meeting with the local exclusive organization(s).

C. Availability of Position Descriptions and Qualification Standards

A copy of the Key, Standard, Individual Position or Qualification Standard which represents the basis for the employee's title and salary level shall be furnished once, when available, to either the employee or the Exclusive Organization Representative upon request. Individual Position Descriptions pertaining to a particular craft shall be made available by the installation head to that craft organization on its request provided the organization has local exclusive recognition or is an affiliate of the National Exclusive Organization.

each day(s) of his absence by substitutes in the same work group of his craft.

3. Substitutes who request annual leave on any day they are scheduled to work may be granted such leave provided they can be spared. Leave charged cannot exceed 8 hours on any one day. The installation head may also consider a request for annual leave on any day a substitute is not scheduled to work.
4. No substitute employee who has been credited with forty hours or more of paid service (work, leave or combination of work and leave) in a service week shall thereafter be granted paid sick or annual leave during the remainder of that service week. Absences in such cases shall be treated as non-duty time not chargeable to paid leave of any kind.

E. Leave for Blood Donations

Each postal installation shall act to encourage and participate in the operation of a blood bank. Postal employees may be excused for the time necessary, but not to exceed one (1) day, to cover absence from regular tours of duty to make blood donations without remuneration to a Red Cross or other nonprofit blood bank. Such absence shall be without loss of pay or charge to annual or sick leave.

ARTICLE XVII

Transportation Between Stations

A. An employee who is regularly scheduled to work during a single duty period at more than one unit of a post office, such as the main office thereof and stations or other units, without a break in duty status, except for normal lunch periods, shall be allowed transportation expenses and travel time on the clock between the separate units of the post office, provided such travel has been duly authorized by a proper postal official.

B. An employee who has been duly authorized by a proper postal official, and who is required to travel from one unit of a post office to another in an emergency situation, shall be allowed such necessary travel time on the clock and shall be authorized transportation expenses therefor.

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IN REPLY REFER TO

Exhibit 1

UNITED STATES POST OFFICE

May 18, 1970

SUBJECT: LEAVE SUMMARY FOR J. FITZGERALD

TO: M. G. ZEID, MANAGER
PERSONNEL SERVICES SECTION
REGIONAL OFFICE, ROOM 521
BOSTON, MA. 02109

FROM: POSTMASTER
BRATTLEBORO VERMONT 05301

With reference to our telephone conversation on subject item, listed below are the total number of work days taken for " other type leave " or " leave without pay ". Annual leave and sick leave are not included.

CALENDAR YEAR	MILITARY LEAVE	LEAVE WITHOUT PAY
1967	15 days	167 days
1968	11 days	174 days
1969	15 days	14 days
1970 to date	13 days	34 days*

* One of these days is ABSENT WITHOUT LEAVE.

If you need additional information, please let me know.

Donald R. DeVarney

Donald R DeVarney

Postmaster

Region called me and asked for this information because J.F. had called Civil Service Commission in Boston to complain about denial; and they needed info for a meeting ~~that~~ [illegible] 5-13 ~~in the days~~.

BEST COPY AVAILABLE

DEPARTMENT OF THE AIR FORCE
AFAFC 3800 YORK ST DENVER CO 80205

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WAGE AND TAX STATEMENT—1971

(For use in States or Cities authorizing combined form)

Employer's State Identification Number

Type or print EMPLOYER'S Federal identification number, name, and address above.

Copy C—
For employee's records

FEDERAL INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION	
Federal income tax withheld	Wages paid subject to withholding in 1971[1]	Other compensation paid in 1971[2]	F.I.C.A. employee tax withheld[3]	Total F.I.C.A. wages paid in 1971[4]
2,370.88	17,733.62	.00	463.81	7,350.00

EMPLOYEE'S social security number ▶ 009-14-0479

E2CL78 50

JOHN W FITZGERALD
132ND FIS MEANG
BANGOR INTL AIRPORT
BANGOR ME 04401

Type or print EMPLOYEE'S name and address (including ZIP code) above.

Name of State	*Gross State wages	State income tax withheld

*Gross wages for State if different from Federal.

1 Includes tips reported by employee. Amount is before payroll deductions or sick pay exclusion.
2 Add this item to wages in reporting wages and salaries on your income tax return.
3 The social security (FICA) rate of 5.2% includes .6% for Hospital Insurance Benefits and 4.6% for old-age, survivors, and disability insurance.
4 Includes tips reported by employee.

Uncollected Employee Tax on Tips . . . $

FORM W-2 Department of the Treasury, Internal Revenue Service

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6

DEPARTMENT OF THE AIR FORCE
AFAFC 3800 YORK ST DENVER CO 80502
84-9980000F PAS E2CL7023

WAGE AND TAX STATEMENT— 1972

Copy C—
For employee's records

Type or print EMPLOYER'S Federal identification number, name and address above

FEDERAL INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION	
Federal income tax withheld	Wages paid subject to withholding	Other compensation paid	F.I.C.A. employee tax withheld	Total F.I.C.A. wages paid
2,255.98	17,723.95	.00	468.00	[illegible]

Type or print EMPLOYEE'S social security number, name, and address (including ZIP code) below

009-14-0479
JOHN W FITZGERALD
132ND FIS MEANG
BANGOR INTL AIRPORT
BANGOR ME 04401

STATE INCOME TAX INFORMATION

State	* Gross State wages	Income tax withheld
ME		

F.I.C.A. rate	Hospital Insurance Rate	Old age, survivors & disability insurance rate
5.2%	.6%	4.6%

Maximum F.I.C.A. Tax/Wages [illegible]

* Gross State wages if different from Federal

FORM W-2 Department of the Treasury, Internal Revenue Service

790.9 .4

BEST COPY AVAILABLE

167

Federal identifying number

State identifying number

168

Copy C

For employee's records

Employer's name & address above

FEDERAL INCOME TAX INFORMATION		SOCIAL SECURITY INFORMATION		STATE OR LOCAL INCOME TAX INFORMATION		
Federal income tax withheld	Wages, tips and other compensation	FICA employee tax withheld	Total FICA wages	Tax withheld	Wages paid	State or locality

Type or print EMPLOYEE's social security number, name and address (including ZIP code) below

OTHER INFORMATION		
FICA rate	Hospital ins rate	Old age, survivors, & disability ins rate
Maximum FICA Tax		Maximum FICA Wages

An "X" in the upper left corner indicates this is a corrected form.

This information is being furnished to the Internal Revenue Service and appropriate State officials.

Form W-2 (Rev. 74) Department of the Treasury - Internal Revenue Service

19,738.03 1974

6 DEPARTMENT OF THE AIR FORCE
AFAFC, 3800 YORK ST
DENVER CO 80205
8.4550000

PAS E2017623

WAGE AND TAX STATEMENT— 1973

Copy C—
For employee's records

Type or print EMPLOYER'S Federal identification number, name and address above

FEDERAL INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION	
Federal income tax withheld	Wages paid subject to withholding	Other compensation paid	F.I.C.A. employee tax withheld	Total F.I.C.A. wages paid
2,207.17	17,157.78		1493.75	21,127.1

Type or print EMPLOYEE'S social security number, name, and address (including ZIP code) below

009 14 0479

JOHN W FITZGERALD
132ND FIS MEANG
BANGOR INTL AIRPORT
BANGOR ME 04401

STATE INCOME TAX INFORMATION		
State	* Gross State wages	Income tax withheld
50		
F.I.C.A. rate	Hospital Insurance Rate	Old age, survivors & disability insurance rate
5.85	1.00	
Maximum F.I.C.A. Tax/Wages		
831.03	14,331.31	

* Gross State wages if different from Federal

FORM W-2 Department of the Treasury, Internal Revenue Service

-59 69 .3 169 computer PL (14) 63

DATE	HOURS		PAY	MILES	STEP
11/69	301.68	40	7843 -	51	8
11/70	353.64	41H	9225 -	51	9
11/71	415.44	44H	10800. -	51	11
11/72	490.92	48H	12500. -	53	12
11/73	545.76	45J or 41K	14189 or 12214 -	56	11
11/74	637.48	47J in 43K	16628 or 14653 -	56	631.54
5/10/75	654.72	47J or 43K	17022. - or 15475	56	654.72

* PAY FIGURES ARE APPROX. CORRECT FOR TIME PERIOD '70 - '72 - EXACTS WOULD HAVE TO BE PROVIDED by PDC in N.Y. N.Y. COMPENSATION SECTION.

* Does not include EQUIPMENT allowance

170 CAPT FITZ ONE W (63)

The military status of Major John FitzGerald is as indicated for the following dates::

September 1972

8)
9) ET & ET
10)
11) ET & AFTP
12)
13) AFTP
14) to ADC ALERT
OCT. 15) (32 days)

October 1972

16) AT
17) "
18) "
19) "
20) "
21) "
24) ET
26) ET & AFTP
27) " " "
28) " " "
30) " " "
31) " " "

November 1972

1) AFTP
4) ET & AfTP
5) ET
7) At
8) At
9) At
10) Et & Aftp
13) Et
16) to ADC ALERT
Dec. 15) (30 days)

December 1972

16) AT
17) "
18) "
19) "
20) "

Totals

ADC ALERT-62 days
ET-18 days
AFTP-11 days
AT-14 days

ADC Alert.
ET Equivalent Training (make up dr. in lieu of UTA)
AFTP Additional Flying Training periods.
AT Annual Training or exercises.

The military status of Major John FitzGerald is as indicated for the following dates:

January 1973

2)
3) AT
4)
5)

6)
7) Et & Et

8) Et & Aftp

9) ET

10)
11) AT

12)
13) Et & Aftp
15)
16)

22) to March 18
ADC ALERT (57 days)

March 1973

23) AFTP
27) " "
28) " "
29) " "

30) AT

April 1973

1) AT
2) "
3) "
4) "
5) "

6) ET & AFTP
7) " " "
17) " " "
24) " " "
25) " " "

28)
30) AFTP

May 1973

1) AFTP

2) ET

3) ET & ET
6) ET & ET

16) to May 31
ADC ALERT (14 days)

June 1973

4)
5) AT

6) Et
8) Et & Aftp

10) to June 30
ADC ALERT (21 days)

July 1973

25) ET & AFTP

27) ET & ET

31) AT

The military status of Major John FitzGerald is as indicated for the following dates:

August 1973

1) AT
2) ET&ET

5) AT

8) ET & AFTP
9)

10) AT

11) ET & ET

12) ET & AFTP
13) " " "

14) AT
15) "
17) "
18) "

20) ET & Aftp

21) AFTP

September 1973

27) ET & AFTP
28) " " " "

October 1973

2) ET & AFTP
3) " " "

4) AT
5) "

6) AFTP

7) ET & ET

9) AT
10) "

11) ET & AFTP
12) " " "

13) AT
16) "
17) "
18) "

19) ET

20) AT

29) to Nov. 29
ADC ALERT (31 days)

November 1973

30) ET & AFTP

December 1973

1) ET & AFTP

5) AT

6) AFTP

7) ET & AFTP
8) " " "

10) AT
11) "
12) "
13) "
14) "

Totals:

ADC ALERT- 155
ET - 48
AFTP - 41
AT - 40

The military status of Major John FitzGerald is as indicated for the following dates:

January 1974

1) to Jan. 28
ADC ALERT (28 days)

29) " " "
30) ET & AFTP
31) " " "

February 1974

1) ET & AFTP
2) " " "
3) " " "

5) AFTP

6) ET & AFTP

7) AT

8) ET & AFTP
9) " " "
11) " " "
12) " " "

13) ET

14) AT
15) AT
20) AT

March 1974

6) AT
7) "
8) "
9) "
10) "

18) to June 24
ADC ALERT
(97 days)

June 1974

25) ET&ET
26) " "
27) " "
28) " "
29) " "
30) " "

July 1974

1) to July 30
ADC ALERT (30 days)

August 1974

1) AT
2) AT
3) AT

5) to Oct. 9
ADC ALERT (65 d

October 1974

11) to Dec. 15
ADC ALERT (65 days)

December 1974

16) AT
17) "

18) ET & ET
19) ET & ET
20) " " "
23) " " "
24) " " "
27) " " "

30) ADC ALERT
31) " " "

Totals:

ADC ALERT- 286
ET 36
AFTP 12
AT- 15.

The military status of Major John FitzGerald is as indicated for the following dates:

January 1975

1) to March 5
ADC ALERT (65 days)

March 1975

6) Et & ET
7) " " "
10) " " "
11) " " "
12) " " "

13) AT
14) AT
15) AT
16) "
17) "
18) "
19) "
20) "
21) "

22) ET & ET

23) to May 30
ACD ALERT (68 days)

June 1975

2) AT
3) "
4) "
5) ~~AT~~

9) ET & ET
10) ET & ET
11) " "
12) " "
13) " "
14) " "

19) to Aug.8
ADC ALERt (50 days)

Totals:

ADC ALERT-183
ET -24
AFTP -0
AT -13

EXH. PLAINTIFF'S EXHIBIT 4 for ident. 175

101ST AIR DEFENSE WING MeANG
Bangor International Airport
Bangor, Maine 04401

13 March 1970

SPECIAL ORDER
M-95

UP Section 503, Title 32 USC, the following members, unit indicated MeANG, ANGUS, are ordered to ACDUTRA for number of days indicated for participation in Year Round Field Training.
ASSIGNMENT: Indiv are asgn to their respective orgn with PDS at Bgr Intl Aprt, Bangor, Maine.
REPORTING DATA: Indiv will proceed fr HOR or pl fr which called to AD NLT 0800 hrs on eff dates of AD. Indiv will be RFAD and return HOR/or pl fr which called to AD upon compl of tng unless sooner rlv by proper auth. Members who tvl within a radius of 50 miles or less fr their PDS are considered to be within reasonable commuting distance and the nature of their dy does not prevent member from commuting.
GENERAL INSTRUCTIONS: Fld Tng Auth F-20-70-1, 28Feb69. BAQ is auth when eligible. Amn auth to ration separately. TDN.
*Dependents auth Commissary and Exchange privileges.
PAY AND ALW CHARGE TO:
Off 4703850 560-4156 P521.01 S594700
Amn 5703850 560-4156 P521.02 S594700
EST TVL/PER DIEM CHARGE TO: OA# 20-94
Off 5703850 560-4120 P521.13 408001 S412001. Tvl $ 18.30
5703850 560-4120 P521.13 409001 S412001. Per Diem $ 2.25
Amn 5703850 460-4120 P521.14 408001 S412001. Tvl $ 9.00

RANK, NAME, SSAN	Eff Date Entered AD Tng	Nr Days	Eff Date Rel From AD Tng	Unit
MAJ JOHN J. FITZGERALD, 009-14-0479	14Mar70	1	14Mar70	8
SGT ROLAND N. ST PIERRE, FG004-34-6526	20Mar70	2	21Mar70	3

FOR THE COMMANDER

Clayton D Jackson

CLAYTON D. JACKSON, CMSgt, MeANG
Asst Admin Officer

DISTRIBUTION
"C"

POST OFFICE DEPARTMENT

RURAL CARRIER TRIP REPORT

POST OFFICE				ACCOUNTING PERIOD		
NAME	STATE	CLASS	NO.	NO.	FROM	THRU
Whitehall, Fairmont 05 x 68	VT	2			5-30-70	6-26-70

Complete 1 copy. Retain in post office. Postmaster or designated supervisor shall see that carrier completes upper portion of form and makes appropriate entries at beginning and end of each daily trip.

CARRIER	SUBSTITUTE OF RECORD 009-12-3728	ROUTE
NAME: John W Fitzgerald	NAME: ROBERT M STEBBINS EMPLOYEE NO.	NO.: 2 LENGTH (Miles): 54

NAMES OF POST OFFICES SUPPLIED BY LOCKED POUCH	OFFICIAL SCHEDULE OF CARRIER			PRINCIPAL MAIL		ACTUAL NO. SERVED ON ROUTE *		
	REPORTS TO P.O.	LEAVES P.O.	RETURNS TO P.O.	ARRIVAL TIME	DISPATCH TIME	BOXES	FAMILIES	PATRONS
1	0730	1000	1330	0820	1735	355	450	1726
2								
3								
4								
5								
6								

HEAVY DUTY ROUTE (No. of stops)	ROADS ON CARRIER'S ROUTE			
	PAVED MILES	UNPAVED MILES (All weather)	DIRT MILES	CONDITION OF DIRT ROADS (Describe briefly) *

DAY OF WEEK	DATE	CARRIER'S DAILY TIME RECORD (Exact hour and minute)					TOTAL DAILY TIME REQUIRED (Less lunch)	SERVED BY (Insert R for Regular, S for Sub.)	MILES OF ROUTE ACTUALLY SERVED	REMARKS (Explain any failure to serve entire route; also cause for deviation from schedule. If more space is needed, use reverse of this form. If carrier was absent, show type of leave as AL, SL, etc., and give name of person serving the route.)
		REPORTED AT POST OFFICE	LEFT OFFICE TO SERVE ROUTE	RETURNED TO POST OFFICE	COMPLETED WORK AT POST OFFICE	LUNCH PERIOD ACTUAL TIME				
Sat.										
Mon.	1 June	0730	1100	1530	1610	0		S	all	Car broke down. LWOP
Tues.	2 June	0730	0955	1245	1255	0		R	11	Car stalled Bowdoinham (3FHM)
Wed.	3 June	0730	1110	1700	1730	0+10		R	11	Car stalled three times, Roy Hobbs assisted repaired last time
Thur.	4 June	0730	1035	1620	1710	0+15		R	11	Car broke down fixed Car broke gear at Concord
Fri.	5 June	0730	1005	1540	1700	0		S	all	AL
Sat.	6 June	0730	0960	1300	1315	0		S	all	AL
Mon.	8 June	0730	0945	1500	1705	0+10		R	11	Car broke down lost 1 hour. Called Wm. Mc + ID Anthony.
Tues.	9 June	0730	1010	1255	1315	0		S	all	A.L.
Wed.	10 June	0730	1000	1310	1330	0		S	all	A.L
Thur.	11 June	0750	1015	1340	1400	0		S	all	A.L.
Fri.	12 June	0730	0955	1315	1330	0		S	all	Sick leave
Sat.	13 June	0730	1000	1250	1305	0		S	all	AL
Mon.	15 June	0730	0940	1240	1300	0		S	all	AL
Tues.	16 June	0730	0955	1220	1240	0		S	all	AL
Wed.	17 June	0730	1000	1330	1340	0		S	all	AL
Thur.	18 June	0730	0955	1310	1325	0		S	all	AL
Fri.	19 June	0730	1000	1300	1320	0		S	all	AL
Sat.	20 June	0735	1030	1430	1505	0		R	11	Except Post, cons HJ IF
Mon.	22 June	0740	1015	1555	1610	0+30		R	all	Thyr conditioning thy broke IFL+RD LM
Tues.	23 June	0730	1030	1335	1345	0		S	all	AWOL. Picked up by CV R.R.
Wed.	24 June	0730	1030	1405	1415	0		S	all	AWOL
Thur.	25 June	0730	1000	1310	1320	0		S	all	AWOL
Fri.	26 June	0735	1020	1550	1540	0		S	all	AWOL

I hereby certify to the accuracy of this report. Robert M Stebbins (Signature of Carrier)

I certify that this report is correct, and that the entries have been made promptly each day: H E Delaney (Signature of Postmaster or Designated Supervisor)

POD Form 4240 May 1967

* As appears in carriers directory, sec. 353.31e PM

GPO : 1967 OF—268-376

176

POST OFFICE DEPARTMENT

RURAL CARRIER TRIP REPORT

POST OFFICE NAME	STATE	CLASS	NO.	ACCOUNTING PERIOD NO.	FROM	THRU
MILTON	VT	2		2	7-25-70	8-21-70

Complete 1 copy. Retain in post office. Postmaster or designated supervisor shall see that carrier completes upper portion of form and makes appropriate entries at beginning and end of each daily trip.

CARRIER NAME	SUBSTITUTE OF RECORD NAME	EMPLOYEE NO.	ROUTE NO.	ROUTE LENGTH (Miles)
John W. FitzGerald	Rupert M. Slebbins	009 12 3928	2	51

NAMES OF POST OFFICES SUPPLIED BY LOCKED POUCH	OFFICIAL SCHEDULE OF CARRIER: REPORTS TO P.O.	LEAVES P.O.	RETURNS TO P.O.	PRINCIPAL MAIL: ARRIVAL TIME	DISPATCH TIME	ACTUAL NO. SERVED ON ROUTE *: BOXES	FAMILIES	PATRONS
1	0730	1030	1415	0810	1735	355	450	1776
2								
3								
4								
5								
6								

HEAVY DUTY ROUTE (No. of stops)	ROADS ON CARRIER'S ROUTE: PAVED MILES	UNPAVED MILES (All weather)	DIRT MILES	CONDITION OF DIRT ROADS (Describe briefly)

DAY OF WEEK	DATE	CARRIER'S DAILY TIME RECORD (Exact hour and minute): REPORTED AT POST OFFICE	LEFT OFFICE TO SERVE ROUTE	RETURNED TO POST OFFICE	COMPLETED WORK AT POST OFFICE	LUNCH PERIOD ACTUAL TIME	TOTAL DAILY TIME REQUIRED (Less lunch)	SERVED BY (Insert R for Regular, S for Sub.)	MILES OF ROUTE ACTUALLY SERVED	REMARKS (Explain any failure to serve entire route; also cause for deviation from schedule. If more space is needed, use reverse of this form. If carrier was absent, show type of leave as AL, SL, etc., and give name of person serving the route.)	
Sat.	25 July 70	0730	1005	1305	1320	0		S	all	[illegible]	L
Mon.	27 July 70	0730	1010	1330	1405	0+10		R	11	680 Jack quinny, routed with explanation of 27 Jan 70	
Tues.	28 July 70	0730	0950	1305	1315	0		S	all	[illegible]	L
Wed.	29 July 70	0730	1005	1320	1340	0		S	all	[illegible]	L
Thur.	30 July 70	0730	1005	1400	1410	0		S	all	[illegible]	L
Fri.	31 July 70	0730	1000	1325	1340	0		S	all	[illegible]	L
Sat.	1 Aug 70	0730	1030	1330	1340	0		S	all	[illegible]	L
Mon.	3 Aug 70	0730	1000	1300	1315	0		S	all	[illegible]	L
Tues.	4 Aug 70	0730	1030	1355	1410	0		S	all	[illegible]	L
Wed.	5 Aug 70	0730	1015	1400	1420	0		S	all	[illegible]	L
Thur.	6 Aug 70	0730	1030	1530	1600	0		S	all	(2) Ext trips RR Xing delay	L
Fri.	7 Aug 70	0730	1005	1305	1315	0		S	all	[illegible]	L
Sat.	8 Aug 70	0730	[illegible]	[illegible]	1240	0		S	all	[illegible]	L
Mon.	10 Aug 70	0730	1030	1340	1400	0		S	all	[illegible]	AL
Tues.	11 Aug 70	0730	1000	1300	1315	0		S	all	[illegible]	L
Wed.	12 Aug 70	0730	1005	1350	1415	0		S	all	[illegible]	L
Thur.	13 Aug 70	0735	1045	1410	1430	0+10		R	all	Exp St George Exp Milton Hill at RG.	
Fri.	14 Aug 70	0732	1000	1430	1535	0+16		R			
Sat.	15 Aug 70	0730	0950	1035	1305	0+10		R	all		
Mon.	17 Aug 70	0730	1005	1340	1355	0+30		R	all		
Tues.	18 Aug 70	0730	0940	1300	1335	0+16		R	11	Exp Cochran.	
Wed.	19 Aug 70	0730	0945	1335	1430	0+15		R			
Thur.	20 Aug 70	0730	1035	1430	1445	0+20		R		Exp Jeff Hoyt. Flag stop request.	
Fri.	21 Aug 70	0730	1010	1515	1600	0+30		R		Exp Colchester 35 min called Lisbon PO.	

I hereby certify to the accuracy of this report: John W. FitzGerald (Signature of Carrier)

I certify that this report is correct, and that the entries have been made promptly each day: W. D. Warnings (Signature of Postmaster or Designated Supervisor)

POD Form 4240 May 1967

* As appears in carriers directory, sec. 353.31e PM

GPO : 1967 OF—265-374
673-256

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